















## HINDUSTAN TIMES CONTEMPT CASE



# HINDUSTAN TIMES CONTEMPT CASE

( *August-November, 1941* )

Record of Hearings and documents of one of the 'most  
sensational Contempt Cases in India of recent times

HINDUSTAN TIMES, NEW DELHI.

~~Price Rs. 2.00~~

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## PREFACE

On the 3rd of August, 1941, the *Hindustan Times* published a news-item from its correspondent in Meerut to the effect that under instructions of his Lordship the Chief Justice, judicial officers in the U.P. were to participate actively in war fund collections. The source of the correspondent's information was not disclosed, but the report was accompanied by the usual formula "I reliably learn". On the 5th of August, the *Hindustan Times* commenting editorially on the matter criticized the Chief Justice and in so doing also drew the inference from the news that the supposed instructions might have been issued through a circular, since the instructions were said to have been conveyed to judicial officers all over the province, although the correspondent in his report had made no mention of a circular but merely referred to instructions. Thereupon the High Court through a bench consisting of the Hon'ble Sir Iqbal Ahmad, Chief Justice, and the Hon'ble Mr. H. J. Collister issued notice to the Editor and the Printer and Publisher of the *Hindustan Times* to appear in their court and show cause why they should not be punished for contempt of court for the comment which appeared in the *Hindustan Times*. The respondents filed affidavits in which they stated that the comment arose from the news item from Meerut which in its turn had been based on certain remarks made by the Second Additional Sessions Judge of Meerut in open court in the course of delivering judgment in a criminal case. It was contended on behalf of the Editor and the Printer and Publisher, who were defended by Sir Tej Bahadur Sapru, that the comment did not constitute contempt of court since it had been based on information gathered by the correspondent from the remarks of a person occupying the position of a Sessions Judge. But the respondents had shown their readiness to express regret in the event of the court holding that contempt had been committed. Evidence was adduced in support of the statement made in the affidavit to the effect that the Second Additional Sessions Judge, while calling upon accused persons

to subscribe to the war fund, had referred to the Hon'ble the Chief Justice and his Excellency the Governor. Mr. Hari Shankar Vidyarthi, the judge in question, however, while admitting that he had collected subscriptions for the war fund in court from the particular accused referred to, totally denied having made any reference to the Chief Justice or the Governor. After several hearings, in the course of which the correspondent was also made a party to the notice, the court held that Mr. Vidyarthi had not referred to the Chief Justice or the Governor, that the correspondent had either drawn on his imagination or proceeded on hearsay, that the Editor had manufactured evidence in support of his case, that all the three respondents were guilty of contempt of court and passed sentence on them. The expression of regret was rejected, the court holding the use of the word "apology" essential. The case, lasting over a period of nearly four months, has drawn widespread attention and comments, ranging from a criticism of the sentences as unduly severe to regarding the judgment as constituting a grave miscarriage of justice, have appeared in nearly every important newspaper in the country, the consensus of opinion being that the existing law of contempt requires modification especially in respect of the powers exercisable by courts leading to the anomaly of the same person virtually functioning as prosecutor as well as judge, even in cases where an alternative procedure may be patently desirable, a view to which authoritative weight has been added by a resolution passed by leading Editors at a meeting of the Standing Committee of the All-India Newspaper Editors' Conference.

The following pages contain a complete report of the case with all relevant documents and a selection of Press comments. It must be understood that the extracts from Press comments are confined to newspapers published in the English language and therefore include nothing of the comments that have appeared in the far more numerous newspapers published in the Indian languages. This was inevitable if the size of the book was to be confined to reasonable

limits. The lay reader and the lawyer interested in the case will find practically all they want in the book. Part I consists of the day-to-day proceedings of the case and is largely a reprint of reports as they appeared in the Press, with slight alteration in form. These include, besides the arguments, the depositions of witnesses. The Press reports are exceedingly full, but the certified text of the whole volume of evidence has also been reproduced in Part II at the end of the text of the judgment. While the general reader will doubtless want the detailed account of proceedings as recorded from the expert professional newspaper reporter's angle, value will be set on Part II from the legal point of view. This has necessarily entailed a repetition of nearly 100 pages of matter which, we trust, the busy reader will condone.

In Part I will also be found the text of a circular which the High Court eventually issued to all its subordinate judicial officers defining its policy regarding the participation of judicial officers in the collection of subscriptions to the war fund. This has been discussed in some of the Press comments appearing in Part III.

*January 1, 1942.*

PUBLISHERS



## Hindustan Times Contempt Case

At the Allahabad High Court on Tuesday, the 9th of September, 1941, their lordships the Chief Justice Sir Iqbal Ahmed and Mr. Justice Collister found Mr. Devadas Gandhi, Editor, and Mr. Devi Prasad Sharma, Printer and Publisher, of the *Hindustan Times*, guilty of contempt of court.

Dr. M. Waliullah, Government Advocate, opened the case and he was followed by Sir Tej Bahadur Sapru, who appeared for the Editor and Printer and Publisher of the paper both of whom were present in court in response to notices served upon them by the High Court. Sir Tej Bahadur Sapru was assisted by Messrs. K. D. Malaviya and Gopalji Mehrotra, Advocates. The court room was crowded to its utmost capacity.

### GOVERNMENT ADVOCATE'S CASE

The Government Advocate opening the case said that notice was issued to the Editor, and Printer and Publisher of the *Hindustan Times* on the basis of the following passage which appeared in the issue dated August 6, and which was reproduced in the affidavit of the Registrar :—

“If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmed, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he has done a thing which would lower the prestige of the courts in the eyes of the people. The presiding officer of a court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to displease. To be absolutely voluntary, war contributions ought to be raised only by non-official committees or individuals. It was bad enough that

*First Hearing (Contd.)*

the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse."

The Government Advocate said this passage appeared on page 4 of the paper which contained the leading article and editorial comments. The passage in question was editorial comment and not a communication by anybody. Furthermore, it would appear from the face of it that there was absolutely no reference to any communication of any sort or kind received by the Editor on which he might have based this comment. 'There was absolutely no reference to any source of information or anything of the sort. On reading the article in the *Hindustan Times*, which was very widely circulated, readers would undoubtedly come to the conclusion that the Allahabad High Court, under its new Chief Justice, had issued a circular which would in effect lower the prestige of the courts.

*Chief Justice*: This means that I am unworthy of the high office that I am holding and, what is more, that I am not maintaining the dignity of the courts subordinate to my court.

The Government Advocate said that on the face of it the article was serious contempt of court. He added he had been given that morning copies of sworn affidavits by the Editor and the Printer and he had not been able, in the short time at his disposal, to go through the bigger one by the Editor.

### SIR T. B. SAPRU'S OPENING ARGUMENTS

Sir Tej Bahadur Sapru, appearing for Messrs. Devadas Gandhi and Devi Prasad Sharma, said they were submitting to their lordships' jurisdiction. Their affidavits disclosed a story the like of which had probably never been heard in this court and it would be his attempt to state facts in the strict order of the dates.

"Before I proceed further your lordship will take the assurance from me which I am going to substantiate later on that it was no part of the intention of Mr. Devadas Gandhi or the Printer and Publisher to cast any reflection upon your lordship or upon any member of this court or to question your capacity to be Chief Justice or to hold the scales of justice even or your capacity to steer



*First Hearing (Contd.)*

“fear of anything unworthy of the dignity of the Chief Justice or unworthy of the dignity of any judge of the High Court. Your lordship may take this assurance from the start.”

*Chief Justice* : Intention in these matters does not count.

*Sir Tej Bahadur Sapru* : I fully realize that. I am putting that before your lordship and I ask your lordship to suspend judgment until I have stated the facts.

Sir Tej Bahadur said he had been at pains to discover a case parallel to this case. There was no case parallel to this case to be found in English reports. Luckily for him there was a case parallel to this case decided by Sir Barnes Peacock in 1869. In that case the Editor of the *Englishman*, Fenwick, and the Printer, Banks, were asked to appear before the Calcutta High Court to explain their conduct and they explained their conduct at length. So far as his clients were concerned, they were doing nothing less than what Captain Fenwick did in that case and he would very respectfully ask your lordship to accept the line adopted by Sir Barnes Peacock, who, after satisfying himself upon the affidavits produced before him that the intention was pure and that everything had been explained before him, discharged the notice.

## SIR B. PEACOCK'S DECISION IN PARALLEL CASE

Sir Tej Bahadur Sapru then quoted the following passage from the judgment of Sir Barnes Peacock reported in 26 *Calcutta Law Journal* :—

“The court would have been prepared to decide that these articles are a contempt, but under all the circumstances, and all imputations of motives having been disclaimed, and Capt. Fenwick having submitted to the court when the rule was issued, the rule will not be carried any further but will be discharged.

“I may say that in my opinion Captain Fenwick has adopted a very honourable and proper course in this matter by avowing himself to be responsible for the articles which have appeared, and thus taking the responsibility off the shoulders of the printer and publisher, who had nothing to do with it. It would have

*First Hearing (Contd.)*

the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse."

The Government Advocate said this passage appeared on page 4 of the paper which contained the leading article and editorial comments. The passage in question was editorial comment and not a communication by anybody. Furthermore, it would appear from the face of it that there was absolutely no reference to any communication of any sort or kind received by the Editor on which he might have based this comment. 'There was absolutely no reference to any source of information or anything of the sort. On reading the article in the *Hindustan Times*, which was very widely circulated, readers would undoubtedly come to the conclusion that the Allahabad High Court, under its new Chief Justice, had issued a circular which would in effect lower the prestige of the courts.

*Chief Justice*: This means that I am unworthy of the high office that I am holding and, what is more, that I am not maintaining the dignity of the courts subordinate to my court.

The Government Advocate said that on the face of it the article was serious contempt of court. He added he had been given that morning copies of sworn affidavits by the Editor and the Printer and he had not been able, in the short time at his disposal, to go through the bigger one by the Editor.

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*First Hearing (Contd.)*

clear of anything unworthy of the dignity of the Chief Justice or unworthy of the dignity of any judge of the High Court. Your lordship may take this assurance from the start."

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"I may say that in my opinion Captain Fenwick has adopted a very honourable and proper course in this matter by avowing himself to be responsible for the articles which have appeared, and thus taking the responsibility off the shoulders of the printer and publisher, who had nothing to do with it. It would have

*First Hearing (Contd.)*

given me much pain if I had been obliged to proceed against the printer and publisher. I also think that Captain Fenwick has adopted a very proper course in having through Mr. Paul withdrawn all imputations of improper motives on the part of the Chief Justice, and in having explained that the word 'cruelty' was not intended in any bad sense, but merely as meaning severity. Captain Fenwick not having any such intention, although the word was susceptible of bearing such a meaning, has done himself honour by expressing that he had no such intention."

Sir Tej explained the circumstances in which the comment in question appeared and said that the editor had done no more than what an editor who was accustomed to deal with a reporter whom he trusted would have done.

## MEERUT COURT INCIDENT

Sir Tej Bahadur Sapru next dealt with the points raised in the Editor's affidavit and said that the *Hindustan Times*, New Delhi, like other important papers, had a local correspondent at Meerut. He was a correspondent both of the *Hindustan Times* and the *Leader*. He sent the item of news from Meerut with regard to the incident which was now the subject of inquiry. Counsel referred to what was said to have happened in the court of Mr. Harishankar Vidyarthi, Second Additional Sessions Judge, Meerut, and how money collected in court for the war fund was placed on the table of the Judge. A sum of Rs. 200 was paid on the spot and a further Rs. 150 promised to be paid the next day. The reporter, having heard this story, sent the item of news which appeared on August 3, and the same thing appeared in the *Leader*. After passing the sentence of transportation on four accused in the Dhakoli Murder Case, this money was collected and placed on the Judge's table. Sir Tej Bahadur said that the significance of it was that the Judge was going to discharge the rest and his suggestion was that justice was being sold, and as a matter of fact, after the money was paid, they were discharged.

*Chief Justice* : The whole judgment must have been read.

*Sir Tej Bahadur Sapru* : According to the affidavit before me

*First Hearing (Contd.)*

four men were transported, and at this stage the Judge decided to make these observations, and when the money was handed over the rest of the judgment was either read out or the substance given out.

*Chief Justice* : I find it very difficult to accept this story. When the Judge was delivering the judgment in a case in which there were 20 accused he would, in the same breath, say so many are convicted and so many acquitted, and I cannot believe that after saying that four persons are transported for life he would not say anything more with regard to the rest.

Sir Tej Bahadur Sapru then said that when the news appeared in the *Hindustan Times*, the Judge sent for the correspondent, who did not see him on the same day but when repeated requests were made he eventually met him on August 13. The Judge told him that the news as sent out was correct but he would like that his name should not be mentioned if any inquiry was made. Nothing happened between August 13 and 25 which was the date of the service of notice.

*Chief Justice* : Did the Judge on the 13th mention to Singhal the fact that notice for contempt was issued? Did Singhal know on that day that notice was issued?

*Sir Tej Bahadur Sapru* : I do not know.

*Chief Justice* : Surely Singhal must have known. It appeared in all the papers.

*Sir Tej Bahadur Sapru* : My suggestion is not going to be that the Judge did not know or Singhal did not know. Very probably they knew because the news had appeared in the papers.

Sir Tej Bahadur Sapru then related the facts mentioned in the affidavit regarding the visit paid to Meerut by Messrs. Gandhi and Bharadwaja and what transpired during their visit. He then read to the court the text of Mr. Gandhi's affidavit.

The Chief Justice asked whether paragraph 8 containing the assurance given to the Court by the respondent amounted to an expression of regret and a submission of apology.

Sir Tej Bahadur Sapru said he wished to deal with the

*First Hearing (Contd.)*

question later. Whatever legal view his lordship might take of that paragraph or whatever view he might take of the law, his client stated on oath that he was not actuated by any malicious motive.

Referring to sub-clause (P) of Para 11, the Chief Justice observed that he was surprised at the District Judge allowing people to come to his residence and to talk about a matter that was judicially engaging his lordship's attention and that it was most improper on the part of the District Judge.

## CHIEF JUSTICE'S STATEMENT

His lordship told Sir Tej Bahadur Sapru that the information contained in the editorial paragraph in question was based on untrue facts and that no circular was issued by him and that he would like further discussion to proceed on that basis.

*Sir Tej Bahadur Sapru* : I am very grateful to your lordship for making that statement.

Sir Tej Bahadur Sapru said the Editor had to carry on his duties from day to day and he had to depend upon his correspondents. If a correspondent supplied news without any basis or out of malicious motive, the Editor must take the responsibility for publishing that news.

Continuing, counsel said that his client in submitting to the Court's jurisdiction and asking their lordships' verdict had been perfectly honourable, frank and courageous because he had taken the responsibility on his own shoulders by making this statement on oath.

*Chief Justice* : What do you mean by saying "by submitting to the jurisdiction of this Court"? Can he avoid the jurisdiction of this Court?

*Sir Tej Bahadur Sapru* : I am using the words found in the judgment of Sir Barnes Peacock.

*Chief Justice* : Is it your contention that if he had not submitted to the jurisdiction of this Court, this Court would have had no jurisdiction?

*First Hearing (Contd )*

*Sir T. B. Sapru* : The sense in which these words were used by Sir Barnes Peacock is this. The editor concerned said to the Court, I practically put myself in your hands.

*Chief Justice* : That is quite different. If you say I throw myself before the Court, but put myself in your hands, that is quite different.

### REGRET OR APOLOGY?

*Sir Tej Bahadur Sapru* said that if his lordship held that the comment made amounted in law to a contempt of court as apart from the intention, then Mr. Devadas Gandhi as a responsible editor was prepared to give the assurance and express regret that it was no part of his intention to bring the Court into disrepute.

*Chief Justice* : Again, Sir Tej, I would like to be clear. You have used the words assurance and expression of regret. Will that be tantamount to an apology?

*Sir T. B. Sapru* : It is for your lordship to decide.

*Chief Justice* : The question is this. Suppose we came to the conclusion that the editor is guilty of contempt. In that case will an apology be forthcoming?

*Sir Tej Bahadur Sapru* : The answer to that is that the editor is prepared to express his regret.

*Chief Justice* : Not apology?

*Sir Tej Bahadur Sapru* : The word apology in law means nothing. It may mean anything, I would show this to your lordship from case law. There would be an expression of regret if your lordship would come to the conclusion that it is contempt.

*Chief Justice* : If we do not come to that conclusion, then the matter ends.

*Sir Tej Bahadur Sapru* then referred to the case decided by Sir Barnes Peacock in which the then Chief Justice of the Calcutta High Court had regarded the explanation given as satisfactory and discharged the rule. *Sir Tej* explained the circumstances in which

*First Hearing (Contd.)*

the comment in question appeared and said that the editor had done no more than what an editor would have done who was accustomed to deal with a reporter whom he trusted.

The Chief Justice observed that neither the Chief Justice nor any other Judge was free from public criticism about the acts done by him, provided that the criticism did not degenerate into contempt of court.

Secondly, what Mr. Vidyarthi was supposed to have said in court was untrue and was a piece of deliberate lie. For that, what action against Mr. Vidyarthi should be taken they would decide later.

*Sir Tej Bahadur Sapru* : I pray that your lordship will take notice of those facts.

*Chief Justice* : We are not going to drop the matter. But what steps against Mr. Vidyarthi will be taken and how he shall be dealt with is totally foreign to the scope of the present inquiry. Here there has been a repetition of falsehood by a paper that is widely circulated throughout India.

*Sir Tej Bahadur Sapru* : With regard to that aspect, I would like to make some submission.

*Justice Collister* : No one has yet had a chance to rebut the allegations.

*Chief Justice* : If the allegations contained in the affidavit are true, they constitute a mitigation of the offence. The offence nevertheless remains.

The Chief Justice asked Sir Tej Bahadur if he conceded that it was contempt.

Sir Tej said he did not concede that it was contempt but for purposes of argument he would proceed on the assumption that the comment amounted to contempt. The circumstances preceding the publication of the comment could not be overlooked by his lordship.

*Chief Justice* : You may rest assured that appropriate action will be taken if the facts alleged are true.



*First Hearing (Contd.)*

### “REFORMER OF HIGH COURT”

Counsel, proceeding, said that the editor in his comment did not affirm anything about his lordship.

*Chief Justice* : Insinuation is at times worse than assertion of fact.

Sir Tej Bahadur Sapru said that there were two parts in his argument, one of which dealt with the matter on the assumption that it amounted to contempt and the other was that if his lordship took a broad view of the article it did not amount to contempt.

*Chief Justice* : Sir Tej, what would be the effect on the man in the street of a statement of that kind?

*Sir Tej Bahadur Sapru* : My lord, we are concerned with reasonable men, not the man in the street.

*Chief Justice* : The editor has adopted the role of a reformer of the court.

*Sir Tej Bahadur* : My lord, there is nothing illegal in the role of a reformer even of the High Court.

*Chief Justice* : It is one thing to invite the attention of the Chief Justice or of any judge to some practice and say that it required modification in some respects and it was quite another thing to say that the new Chief Justice or any judge should reform himself in this respect. The latter amounted to contempt. The former did not.

Sir Tej Bahadur quoted the first sentence of the comment, “If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity has issued a circular, etc.” and stressed that the Editor, in spite of the information on which he relied, had taken the precaution to qualify his comment with the word “if”, because there can be no absolute guarantee of the truth of one’s information.

*Chief Justice* : Supposing it was said, “If it is true that the Judges of the High Court decide cases without applying their minds to the material before them, etc.” would it not be contempt?

*First Hearing (Contd.)*

*Sir Tej Bahadur:* My lord, the observation might very well mean that the judges do not take an intelligent view of the case, and that need not necessarily amount to contempt. But I do not desire to take shelter under the word "if."

Counsel then argued that the editor had not criticized the Chief Justice's ability or action as a Judge, but had referred to something done in the Chief Justice's administrative capacity.

*Chief Justice:* That argument cannot hold me for a minute. It is well known that the judicial and administrative capacities of the Chief Justice are one and the same and no distinction can be drawn between them.

The Chief Justice then quoted the last sentence of the comment: "It was bad enough that the services of the members of the Executive were utilized for the purpose, but to make judicial officers do this work is something worse," and said: "This means that I make judicial officers do the work."

### FOUND "GUILTY"—JUDGMENT RESERVED

Sir Tej Bahadur Sapru in his further arguments submitted that if the Court came to the conclusion that it was an offence within the meaning of the law, then their lordships had the assurance given in the affidavit in more paragraphs than one, that it was no part of the intention of his client to cast any reflection on the Chief Justice and he had expressed in one paragraph his unfeigned regret.

*Chief Justice:* The matter is such that it cannot be allowed to rest where it is on mere assurance in the absence of an apology. We are going to reserve judgment. Having given due weight to what you have said, we have arrived at the conclusion that your clients are guilty of contempt of court, and in the absence of an apology, for which we give time till the day after tomorrow, it shall be our duty to pass sentence according to law.

It was also announced that judgment would be delivered on Monday, September 15.

**WHAT HAPPENED AT MEERUT****MR. DEVADAS GANDHI'S AFFIDAVIT**

*The following is the text of the affidavit submitted by Mr. Devadas Gandhi, Editor of the "Hindustan Times."*

I solemnly affirm and state that I am the Editor of the *Hindustan Times* and I have received the notice issued by this Hon'ble Court in the above proceeding.

(2) I solemnly affirm and state that the comments which form the subject of the present proceedings appeared in the issue of the *Hindustan Times*, dated August 6, 1941, and as the Editor of the newspaper concerned, I take full responsibility therefor.

(3) I solemnly affirm and state that the said comments, which appeared in the issue of the *Hindustan Times*, dated August 6, 1941, were preceded by the publication of a news item in the issue of August 3, 1941, a cutting of which I attach hereto.

(4) I solemnly affirm and state that the same news appeared in the dak edition of the *Leader* of Allahabad dated August 6, 1941.

(5) I solemnly affirm and state that the correspondent of the *Hindustan Times* at Meerut who furnished the news is one Mr. R. L. Singhal who has been connected as a correspondent with the *Hindustan Times* for more than 7 years, during which period neither have I nor has any member of my Editorial Staff at any time had occasion to doubt his honesty or efficiency, and that when the news in question was furnished by him I assumed, having regard to my experience of him, that he must have taken care to ascertain its accuracy.

(6) I solemnly affirm and state that the same Mr. Singhal is also the Meerut correspondent of the *Leader* of Allahabad and I have personally ascertained from Mr. Krishna Ram Mehta, the Editor of the *Leader* that he shares my views of Mr. Singhal's veracity and efficiency.

(7) I solemnly affirm and state that I am most anxious to place all the facts before this Hon'ble Court and that since the notice was issued to me I have made personal inquiries at Meerut and the facts, as ascertained by me, are stated below.

**NO REFLECTION**

(8) I solemnly affirm and state that before relating those facts I desire to assure this Hon'ble Court that it was no part of my intention to cast any reflection upon the conduct of his lordship the

*Mr. Gandhi's Affidavit (Contd.)*

Hon'ble Chief Justice or to bring this Hon'ble Court into disrepute or contempt, and I should be sorry indeed if my conduct in publishing these comments, which I did publish as an Editor, relying on the accuracy of my informant, were interpreted as implying any malicious intention on my part or intended to bring this Hon'ble Court or any member of it into disrepute.

(9) I solemnly affirm and state that on the other hand, my intention was to maintain the reputation of the High Court and the purity of administration of justice and to protect the same from being brought into disrepute by the sort of things to which my attention was drawn by my correspondent.

(10) I solemnly affirm and state that in the light of the facts which I am going to narrate below, this Hon'ble Court may be pleased to form its own opinion as to the circumstances in which the news and the comments thereon came to be published in my newspaper and also as to my intention in publishing the same.

## ADDITIONAL SESSIONS JUDGE'S STATEMENT IN COURT

(11) I solemnly affirm and state the true facts which are as follows:

(A) My correspondent, Mr. R. L. Singhal, was present in the court of Mr. Hari Shankar Vidyarthi, Second Additional Sessions Judge of Meerut, on July 31, 1941, when the latter pronounced his judgment in the Dhakoli Murder Case.

(B) After passing a sentence of transportation for life on four out of twenty accused in the case, the learned Judge made the following statement in open court, in the presence of lawyers and litigants and my said correspondent, Mr. Singhal:

"Chunke Chief Justice Saheb ne, jinse ke his Excellency the Governor ne war efforts men madad dene ki request ki hai, ham logon se larai ka chanda ekattha karne ke liye kaha hai is liye hamara yeh farz hai ke ham bhi chanda ekattha karen aur is men ap log bhi madaai karen."

The translation of the above statement in English is as follows:

"Since the Chief Justice, who has been requested by his Excellency the Governor to help in the war efforts, has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work."

(C) Mr. Singhal having heard the above statement with his own ears in open court sent the news referred to in Para 3 above, to the *Hindustan Times* which appeared in its issue of August 3 1941.

*Mr. Gandhi's Affidavit (Contd.)*

(D) After the above statement was made by the Judge, lawyers and litigants present in court held hurried consultations between themselves and Rs. 200 was actually collected on the spot and placed on the table of the Judge.

(E) At the same time, according to the information supplied to me by Mr. Singhal, Mr. Surajbal Swami, a legal practitioner, who appeared for some of the accused in that case, told the court that he had collected Rs. 150 from his clients as requested by the Judge, and that he would present that money the next morning.

(F) The Judge then declared the rest of the accused in the Dnakoli Murder Case discharged.

(G) Among those present in the court-room at the time that the incidents mentioned above happened, were Mr. Surajbal Swami and Mr. K. N. Banerji, lawyers.

## VISIT TO MEERUT

(H) After the receipt of the notice of this Hon'ble Court on August 25, at Delhi, I visited Meerut along with Mr. D. D. Bharadwaja, Assistant Editor of the *Hindustan Times*, on August 31 to ascertain the facts. There Mr. K. N. Banerji referred to in Para 11(G) met me at the residence of Prof. D. L. Dubey and confirmed, in the presence of others, to me the above-mentioned facts and also that the Judge had made the statement ascribed to him, and Mr. Banerji expressed his readiness to state these facts before the High Court, if he should be summoned.

(I) I further learnt from Mr. K. N. Banerji that, on the evening of the day of the occurrence, namely July 31, he had met at the club, Mr. N. B. Bonarji, I.C.S., the then District Magistrate of Meerut, and now Officiating Commissioner, Meerut Division, and brought the matter to his notice, and that Mr. Bonarji had expressed surprise that a judicial officer should have acted in the way Mr. Vidhyarthi was represented to have done.

(J) On September 1, 1941, the day following my visit to Meerut, Mr. K. N. Banerji told Mr. Bharadwaja, my Assistant Editor, at the residence and in the presence of Prof. D. L. Dubey of the Meerut College, that he (Mr. Banerji) had apprised Mr. Akbar Husain, I.C.S., the District and Sessions Judge, of the facts.

(K) Mr. K. N. Banerji further told Mr. Bharadwaja that upon Mr. Akbar Husain making inquiries from the Second Additional Sessions Judge the latter admitted, in the presence of Mr. K. N. Banerji, having made the statement ascribed to him and collected contributions to the War Fund.

*Mr. Gandhi's Affidavit (Contd.)*

(L) While Mr. K. N. Banerji was still talking to Mr. Bharadwaja, Mr. Surajbal Swami and Mr. Radhe Behari, Vakils, reached there.

(M) Mr. Surajbal Swami said that Mr. Vidyarthi, the Judge, had sent for him (Mr. Surajbal Swami) earlier in the day, but that he could not go to see him.

(N) Thereafter, according to Mr. Surajbal Swami, Mr. Vidyarthi called to his Chamber, Mr. Surajbal Swami's son-in-law, Mr. Krishna Swarup Sharma, a junior lawyer of a few months' standing, and got from him a signed statement to the effect that Mr. Vidyarthi had not made any statement in court such as was being attributed to him.

(O) Mr. Surajbal Swami was very indignant and said that it was most improper for a Judge to exercise pressure on a young man like his son-in-law, Mr. Krishna Swarup Sharma, and obtain an incorrect statement just to save himself.

(P) On the following day, September 2, 1941, Mr. Bharadwaja had an interview with Mr. Akbar Husain, I.C.S., the District and Sessions Judge, when Mr. Bharadwaja brought to his notice Mr. Surajbal Swami's statement that Mr. Krishna Swarup Sharma had been called by Mr. Vidyarthi and that Mr. Vidyarthi had taken from him a statement by exercising pressure.

(Q) The comment in question which appeared in the issue of the *Hindustan Times* which reached Allahabad on August 6, 1941, appeared in the morning edition of August 5, at Delhi and reached Meerut the same morning.

## CORRESPONDENT SEES JUDGE

(R) On the same evening Mr. Vidyarthi sent his stenographer, Mohammad Yunus Khan, to see Mr. Singhal, but as Mr. Singhal was not present at his house, the said Mohammad Yunus Khan left a note with his signature thereon, bearing date August 5, 1941, asking Mr. Singhal to see the Judge in his Chamber (the word used in the note is "parlour") as the Judge wanted to "consult him in a particular matter." I attach the note which has been given to me by Mr. Singhal.

(S) Mr. Singhal did not go to see the Judge for some time, but was pestered with requests by various persons on behalf of the Judge. One of these was Mr. Gauri Shankar, resident of Budhana Gate, and eventually Mr. Singhal went to see him in company with Mr. Gauri Shankar on August 13, 1941, when Mr. Vidyarthi, while admitting that the news in the *Hindustan Times* of August 3, 1941,

*Mr. Gandhi's Affidavit* (Contd.)

was a faithful reproduction of what had happened in court, asked Mr. Singhal not to mention his name in the course of any inquiry which might be made.

(12) I solemnly affirm and state that my correspondent, Mr. R. L. Singhal, acted in the performance of his duty as a correspondent in sending the news referred to in Para 3 for publication, when he found that the presiding Judge of the court, made a statement to the effect given above in his presence and the presence of the lawyers and litigants.

## WAR FUND COLLECTIONS

(13) I solemnly affirm and state that as Editor of the *Hindustan Times* I had been receiving complaints from different quarters that some pressure had been exercised by some officials on people in the matter of raising subscriptions for the war and that I had also noticed that these complaints had been referred to by some public men in their speeches or statements and found expression in some newspapers also and that at the time I received the news in question from my correspondent, I had no reason to believe or suspect that his report was inaccurate, and since then I have as a result of my inquiries, come to know that it was actually based upon what the Second Additional Sessions Judge referred to had publicly and openly stated in court and that in publishing the comments in question my sole motive was to emphasize that the High Court should have nothing to do with regard to the controversy that had sprung up in the country as to the war subscriptions.

(14) I solemnly affirm and state that I am willing to give every assistance to this Hon'ble Court in sifting the facts stated by me, if necessary, and I again repeat my assurance that at no stage was it my intention to harm the reputation of this Hon'ble Court or to bring it into disrepute.

(15) I solemnly affirm and state that the facts stated in paragraphs 1, 2, 3, 4, 5, 6, 8, 9; 11 sub-clauses (H), (Q); 12; 13 and 14 are true to my personal knowledge, and the statements made in paragraph 11 sub-clauses (A), (B), (C), (D), (E), (F), (G), (R), (S), are verified on the information supplied by Mr. Singhal and statements in paragraph 11 sub-clauses (J), (K), (L), (M), (N), (O), (P), are verified on information supplied by Mr. Bharadwaja, which I believe to be true that it conceals nothing and that no part of it is false.

## Printer And Publisher's Affidavit

*The following is the text of the affidavit filed on September 9 by Pandit Devi Prasad Sharma, Printer and Publisher of the "Hindustan Times":*

I solemnly affirm and state that I am the Printer and Publisher of the *Hindustan Times* and I have received the notice issued by this Hon'ble Court in the above proceeding.

(2) I solemnly affirm and state that the comments which form the subject of the present proceedings, appeared in the issue of the *Hindustan Times*, dated August 6, 1941, and as the Printer and Publisher I take full responsibility therefor.

(3) I solemnly affirm and state that the said comment, which appeared in the issue of the *Hindustan Times*, dated August 6, 1941, was preceded by the publication of a news item in the issue of the *Hindustan Times*, dated August 3, 1941, a cutting of which is attached to the affidavit of Mr. Devadas Gandhi, the Editor.

(4) I solemnly affirm and state that Mr. Devadas Gandhi, the Editor, and Mr. D. D. Bharadwaja, Assistant Editor, had been to Meerut to investigate into the correctness or otherwise of the news on which the comment was based and the information that came to their knowledge is embodied in the affidavit of Mr. Devadas Gandhi, the Editor of the *Hindustan Times*.

(5) I solemnly assure this Hon'ble Court that at no stage was it my intention to print or publish anything that would harm the reputation of this Court or bring it into disrepute.



## THE NEWS ITEM

*The following is the news item alluded to in the case, a cutting of which was filed with Mr. Devadas Gandhi's Affidavit:—*

### JUDICIAL OFFICERS FOR WAR WORK

#### RAISING SUBSCRIPTIONS

#### NEW CHIEF JUSTICE'S CIRCULAR?

(From Our Correspondent)

MEERUT, Aug. 1.

With the judicial officers also now co-operating actively in the war efforts, the "efforts" are bound to receive a heavy push forward. The judicial officers all over the province have been, I reliably learn, asked by the new Chief Justice of the Allahabad High Court who, it is understood, has been requested by his Excellency the Governor, for co-operation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased.

### MURDER CASE JUDGMENT

Judgment was delivered by the Second Additional Sessions Judge, Meerut, in the sensational "Dhakoli Murder" case in which 20 persons of village Dhakoli were committed to the court of sessions to stand their trial for murder, rioting, etc.

Four of the accused, viz., Durga (32), Puran (20), Badri (36), and Manglu (25), were found guilty of the various offences charged against them and convicted of the same and sentenced each to transportation for life under Section 302-149 and to six months under Section 323-147, and another six months under Section 147. All the sentences are to run concurrently. The learned Judge did not find sufficient evidence for the conviction of the rest and accordingly acquitted them.

The case arose out of the brutal murder of two persons at dawn on a Purnamashi day last winter, when they were going to have a dip in the Ganges.

A week before the murder Ram Charan, accused, gave out that Makhan, deceased, was carrying liaison with Murli's wife. Things

*The News Item (Contd.)*

developed further and Ram Charan was alleged to have remarked that he would make short work of Makhan in a week.

On January 13, 1941, Nathoo, Daya Chand, Makhan and Ram Saroop set out in a tonga at dawn for a dip in the Ganges. As they neared a grove, some 30 to 40 persons emerged from the grove armed with lathis, ballams, etc., and fell upon the four persons. Nathoo and Daya Chand were surrounded by their assailants and beaten to death, while Ram Saroop escaped with minor injuries.

All the accused persons stood on the spot ready to deal with the sympathizers of Makhan if they ventured to come to his rescue. They, however, did not molest the ladies who came to remove Daya Chand, who was still breathing, and allowed them to remove his body in a tonga. He, however, died on reaching the Mowana dispensary.

*The same news appeared in the "Leader" of Allahabad in the following form:—*

MURDERED WHILE GOING FOR A DIP

4 ACCUSED SENTENCED: 16 ACQUITTED

(From Our Correspondent)

MEERUT, Aug. 1.

Judgment has been delivered by the Second Additional Sessions Judge, Meerut, in the sensational "Dhakoli murder" case in which 20 persons of village Dhakoli were committed to the court of sessions to stand their trial for murder and rioting, etc.

Four of the accused, viz., Durga (32), Puran (20), Badri (36) and Manglu (25), were found guilty of the various offences charged against and convicted of the same and sentenced each to transportation for life under Section 302/149 and to six months under Section 323/149 and to another six months under Section 147. All the sentences are to run concurrently. The learned judge did not find sufficient evidence for the conviction of the rest and accordingly acquitted them.

The case arose out of the brutal murder of two persons in the dawn of one Purnamashi in last winter when they were going to have a dip in the Ganges.

The prosecution story was that there were two factions in the village, which were at daggers drawn with each other. A week

*The News Item in the "Leader" (Contd.)*

before the murder Ram Charan, accused, gave out that Makkhan, deceased, was carrying liaison with Murli's wife. Things developed further and Ram Charan was alleged to have remarked that he would make short work of Makkhan in a week.

On January 13, 1941, Nathoo, Daya Chand, Makkhan and Ram Saroop set out in a tonga at dawn for a dip in the Ganges. As they neared Har Dutt's grove some 30/40 persons emerged from the grove armed with lathis, ballams, etc., and fell upon the four persons. Nathoo and Daya Chand were surrounded by their assailants and beaten to death, while Ram Saroop escaped with minor injuries.

The accused pleaded not guilty to the charges.

JUDICIAL OFFICERS' CO-OPERATION

With the judicial officers also co-operating actively now in the war efforts the efforts are bound to receive a heavy push forward. The judicial officers all over the province have been, I reliably learn, asked by the Chief Justice of the Allahabad High Court, who, it is understood, has been requested by his Excellency the Governor for co-operation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could give as much and as little as they pleased.

—*The "Leader," Wednesday, August 6, 1941.*

**ALLAHABAD HIGH COURT****ISSUE OF WRIT OF CONTEMPT**

[REPORT IN "LEADER" (ALLAHABAD), AUG. 9, 1941.]

(Before the Chief Justice and Mr. Justice Collister)

ALLAHABAD, Aug. 8.

Having read the report of the Registrar of the High Court and the affidavit filed in support of the same, their lordships today directed that notice should issue to the Editor, and the Printer and Publisher of the *Hindustan Times*, New Delhi, to show cause why they should not be dealt with for contempt of court for printing and publishing in the issue of the *Hindustan Times* dated August 6, 1941, the passage mentioned in the affidavit of the Registrar. The Editor and the Printer and Publisher were directed to appear in person on Tuesday, September 9, at 10 a.m. Notice of these proceedings was also directed to be given to the Government Advocate.

**CONTEMPT OF COURT ALLEGED****NOTICE ISSUED TO "HINDUSTAN TIMES"**

[REPORT IN "HINDUSTAN TIMES," AUG. 14, 1941.]

ALLAHABAD, Aug. 12.

Their lordships, the Chief Justice and Mr. Justice Collister, having read the report of the Registrar of the High Court and the affidavit filed in support of the same, directed on August 8 that notice should be issued to the Editor and the Printer and Publisher of the *Hindustan Times*, New Delhi, to show cause why they should not be dealt with for contempt of court for printing and publishing in the issue of the *Hindustan Times* dated August 6, 1941, the passage mentioned in the affidavit of the Registrar. The affidavit referred to a matter in the editorial columns under "Current Comments." The Editor and the Printer and Publisher were directed to appear in person on Tuesday, September 9, at 10 a.m. Notice of these proceedings was also directed to be given to the Government Advocate.

## **MUHAMMAD YUNAS KHAN'S LETTER**

### **Singhal Requested To See Judge**

Please see the Second Additional Sessions Judge, Mr. Hari Shankar Vidyarthi, at his parlour, this evening, as he wants to consult you in a particular matter.

Yours respectfully,  
(Sd.) Md. Yunas Khan.

# HIGH COURT'S NOTICE

## CIVIL SIDE

Quasi-Criminal Jurisdiction, dated Allahabad, 8th of August, 1941.

### PRESENT

The Hon'ble Sir Iqbal Ahmad, Kt., Chief Justice, and the Hon'ble H. J. Collister, Judge.

In the matter of Misc. Case No. 8/41 (Contempt of Court). K.E. Applicant vs. Devi Prasad Sharma and another Opposite parties.

Devadas Gandhi, Managing Editor, *Hindustan Times*, New Delhi.

Upon reading the report of the Registrar of the High Court of Judicature at Allahabad, along with an affidavit, copies whereof are enclosed herewith, it is

### ORDERED

Take notice that you are hereby warned to appear in person in this Court on Tuesday, the 9th of September, 1941, punctually at 10 a.m. to show cause why you should not be punished for contempt of Court for publishing the comment in the issue of the *Hindustan Times*, New Delhi, dated 6th of August, 1941, as mentioned in the accompanying affidavit.

Given under my hand and the seal of the Court this 12th day of August, 1941.

Sd/- (Illegible),

Assistant Registrar, High Court, Allahabad.

### REPORT OF REGISTRAR

Whereas it has become known to me, Norman Storr, Registrar of the High Court of Judicature, at Allahabad, that there appeared in the *Hindustan Times* of Wednesday, August the 6th, 1941, the passage mentioned in the accompanying affidavit, and whereas it appears that this amounts to and is a contempt of the High Court of Judicature at Allahabad, I bring this to your Lordships' notice so that suitable action may be taken.

Sd/- N. STORR, Registrar.

Dated August 8, 1941.

*High Court's Notice (Contd.)*

REGISTRAR'S AFFIDAVIT.

In Misc. Contempt of Court Case No. 8 of 1941.

K.E. through Norman Storr, Esq., I.C.S., Registrar, High Court of Judicature at Allahabad, Applicant, vs. The Editor, *Hindustan Times*, opposite-party.

I, Norman Storr, Registrar, High Court of Judicature at Allahabad, do solemnly swear that I have this day read in the *Hindustan Times*, dated Wednesday, August the 6th, 1941, the passage quoted below:

"If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he has done a thing which would lower the prestige of the courts in the eyes of the people. The presiding officer of a court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to displease. To be absolutely voluntary, war contributions ought to be raised only by non-official committees or individuals. It was bad enough that the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse."

I solemnly affirm and state that no part of it is untrue and that nothing has been concealed.

Sd. N. STORR,

Registrar.

## JUDGMENT POSTPONED

## Alteration In Procedure

ALLAHABAD, Sept. 11.

Judgment in the *Hindustan Times* contempt of court case will not be delivered on Monday, September 15.

Mr. Harishankar Vidyarthi, Additional Sessions Judge, and Mr. Akbar Hussain, Sessions Judge, Meerut, to whom references were made in the affidavit filed by Mr. Devadas Gandhi, Editor of the *Hindustan Times*, will be examined by the court on Monday. The editor will also be allowed to cross-examine them and if the editor desires to introduce any evidence, another date will be fixed for it.

The Chief Justice made this announcement in court today. Addressing the Rt. Hon. Sir Tej Bahadur Sapru who had appeared for the Editor, and Printer and Publisher in the contempt case, the Chief Justice said: "Mr. Justice Collister and I have summoned Mr. Vidyarthi from Meerut. We asked for his explanation with reference to the allegations contained in the affidavit of Mr. Devadas Gandhi. Mr. Vidyarthi positively asserts that most of the allegations are untrue. We have therefore directed Mr. Vidyarthi and Mr. Akbar Husain to be present here in court on Monday, September 15 on which date we propose to examine them in court. I have brought this to your notice so that you may be prepared for their cross-examination and such evidence as you may desire to produce you may bring and we shall fix a future date to suit your convenience."

*Sir Tej Bahadur Sapru*: Have I your Lordship's permission to send a telegram informing my clients of what your Lordship has said?

*Chief Justice*: And inform your clients that both Mr. Vidyarthi and Mr. Akbar Husain will be examined by us as witnesses on September 15 and you may be ready for cross-examination. We are in no hurry. If it would not suit your clients to bring their witnesses on that date they may bring them



*Second Hearing (Contd.)*

on such other date as would suit their convenience, and similarly if Mr. Vidyarthi suggests any evidence we shall take it.

*Sir Tej Bahadur Sapru* : I think it will be necessary on my part to examine some of the pleaders mentioned in Mr. Devadas Gandhi's affidavit. It may be necessary to examine Mr. Banerji and Mr. Swami.

*Chief Justice* : It will be.

*Sir Tej Bahadur Sapru* : I do not know whether my clients will be ready by Monday.

*The Chief Justice* : Your convenience and the convenience of your clients will be consulted in fixing the date.

*Sir Tej Bahadur Sapru* : I shall have my clients here on Monday. Then I take it that your Lordship will not deliver your judgment in the contempt case on Monday.

*Chief Justice* : No; we will not, before we arrive at a finding. Much will depend upon the evidence. If your affidavit is true, as I observed on the last date, it constitutes a mitigation of the offence.

*Sir Tej Bahadur Sapru* : I don't mind telling your Lordship that only about two or three hours ago I sent a telegram in the morning to my client inquiring whether he wants me to move your Lordship for an adjournment in regard to the judgment, because I had a discussion with him after your Lordship had heard the case.

*Chief Justice* : He will be here on Monday.

*Sir Tej Bahadur Sapru* : I am going to send a fresh telegram, I have sent one telegram already in the morning. After your Lordship has made this statement I shall send a telegram that he must be here. Perhaps your Lordship will reserve to me the liberty of asking for another date.

*Chief Justice* : Of course. Any date that will suit you will be fixed.

*Sir Tej Bahadur Sapru* : My clients, my Lord, are very anxious that the matter should be sifted to the bottom.

## EXAMINATION OF JUDGE

### Admissions Regarding Collections In Court

ALLAHABAD, Sept. 15.

In the contempt of court case instituted by the Allahabad High Court against the *Hindustan Times*, as announced earlier, the original plan of the court to pronounce judgment on Monday, the 15th, was altered and instead the second Additional Sessions Judge of Meerut and the District Judge were examined at length in respect of the categorical statements contained in the affidavit of Mr. Devadas Gandhi, the Editor of the *Hindustan Times*.

#### MR. VIDYARTHI EXAMINED

Mr. Harishankar Vidyarthi examined by the Chief Justice said that a copy of Mr. Devadas Gandhi's affidavit had been supplied to him and he had read it from beginning to end. He denied having used the words ascribed to him in Para 2 (B) that the Chief Justice had been requested by his Excellency the Governor to help in the war efforts, etc., nor had he used words to that effect. He had, however, asked for subscriptions to the war fund without making any reference to the Chief Justice or the Governor. He asked pleaders to speak to their clients and collect money by way of charity to help wounded soldiers. By clients he meant accused persons in the case in which he had pronounced judgment and he had asked for subscriptions after he had pronounced judgment. He did not pronounce judgment

*Thurd Hearing (Contd.)*

piecemeal. He pronounced the judgment all at once, convicting some of the accused and acquitting the rest.

On that day Rs. 200 were subscribed.

*Mr. Justice Collister:* In court?

*Mr. Vidyarthi:* Yes, my lord.

Proceeding, witness said that the amount was not, as alleged in the affidavit, placed on his table. The money was kept with the pleader Mr. S. C. Gupta. Mr. Surajbal Swami did not say that he had collected Rs. 150 from his clients and that he would present the money next morning.

The allegation contained in Para 11 (F) that he then declared the rest of the accused in the murder case discharged was untrue. Mr. K. N. Banerji was not one of the lawyers appearing in the murder case and the judge did not remember if he was present in court at the time. Mr. Surajbal Swami was appearing for some of the accused and he was present in the court.

### SIGNED STATEMENTS DESTROYED

Witness admitted taking signed statements from Mr. Krishna Sarup Sharma and from some other pleaders engaged in the criminal case. This he did on September 1. Witness did not retain those statements but had destroyed them. He realized that perhaps it was not very nice on his part to take signed statements from pleaders. He asked his stenographer, Mahomed Yunus Khan, to tell Mr. Singhal to come to see him in his chamber, if Yunus Khan found Mr. Singhal in the court. Yunus Khan went to Mr. Singhal's residence on August 5 to call him. Mr. Singhal did not come to see him. Yunus Khan forgot to ask Mr. Singhal in court and therefore he went to his house. Yunus Khan said Mr. Singhal was not at his residence and therefore he had left a slip asking him to come and see him in his chamber. Mr. Singhal did not see witness on August 13. After the slip was not replied, no attempt was made by witness directly or indirectly to interview Mr. Singhal. Mr. Singhal met Yunus Khan that evening in the bazar and told him that he had no time to see witness. Witness never told Mr. Singhal that the

*Third Hearing (Co*

report in the *Hindustan Times* of August 3 was a faithful reproduction of what happened in court. He never had any conversation with Mr. Singhal.

Concerning the news, he had never told Mr. Akbar Husain, the District Judge, in the presence of Mr. K. N. Banerji, that he had made the statement ascribed to him by the news in the *Hindustan Times*. In fact, Mr. K. N. Banerji himself denied that witness had ever made such a statement in his presence. Witness told the District Judge that he had collected subscriptions for war funds and that he afterwards realized that it was improper on his part to have done so and he expressed his regret to the District Judge for having raised subscriptions in court.

## CROSS-EXAMINATION

Cross-examined by Sir Tej Bahadur Sapru, Mr. Harishankar Vidyarthi stated that he was trying a criminal case known as the Dhikoli murder case. He did not remember what date was fixed originally for judgment, but judgment was delivered on July 31. Altogether there were 20 accused in that case. At the time of delivery of judgment, all the accused were present. They were represented by several pleaders and one of them was Mr. Surajbal Swami. Witness read the operative part of the judgment in open court and sentenced four of the accused to transportation for life and he passed order acquitting the rest.

*Chief Justice* : You acquitted the rest in the same breath?

*Witness* : Yes, in the same breath.

*Sir Tej Bahadur Sapru* : At what precise moment did this conversation with regard to subscriptions take place?

*Witness* : After the operative part of the judgment had been pronounced, I told the pleaders for the accused to raise subscriptions for the war fund.

*Sir T. B. Sapru* : After you pronounced sentence, I take it that the accused on whom you passed the sentence for transportation were taken out by the police?

*Third Hearing (Contd.)*

*Witness :* All the 20 accused were present in the court when I asked the pleaders to raise subscriptions.

*Sir Tej Bahadur Sapru :* And the four persons on whom you passed the sentence of transportation had not been by that time removed?

*Witness :* Out of the 20 accused, 15 were in custody and five were on bail. All the 20 accused were present in the court.

When the witness said that the best form of charity was to help wounded soldiers and their relations, no comment was made by any of the accused persons. The pleaders consulted the *pairokars* of the accused in the court-room. Having consulted them, the pleaders said that some of the accused had given Rs. 200 willingly.

*Sir Tej Bahadur Sapru :* I take it that by the expression some of the accused you mean those accused whom you had acquitted, or do you include the four whom you had sentenced?

*Witness :* Those who were transported to life did not offer to pay anything, nor did I expect them to contribute any amount.

### EARLIER COLLECTIONS

*Sir Tej Bahadur Sapru :* Was it the first experiment you tried or had you tried that experiment in any other case?

*Witness :* Before July 31, I had also asked for subscriptions from pleaders in another criminal case and Rs. 50 was subscribed and paid to the Secretary of the War Fund on the same day when this sum of Rs. 200 was paid.

Witness did not remember the name of the pleader who said on July 31 that Rs. 200 were being paid, had been paid or would be paid. He did not remember whether it was Mr. Swami who said this.

So far as witness remembered, Mr. Swami did not tell him in court on July 31 that he collected Rs. 150 and would present the amount to him the next day. A sum of Rs. 450 in all was collected from the accused in the Dhakoli case in between July 31 and August 2.

*Third Hearing (Contd.)*

*Sir Tej Bahadur Sapru* : Was Mr. S. C. Gupta one of the pleaders for the accused?

*Witness* : Yes, Mr. Gupta was pleader for the same accused for whom Mr. Swāmi was appearing.

*Sir Tej Bahadur Sapru* : So that on July 31 there was nothing more than the promise to pay Rs. 200 made in your presence?

*Witness* : On July 31, Rs. 200 were actually collected and the matter had passed from the region of promise.

*Witness*, proceeding, stated that he saw this money with his own eyes in the court-room and he did not remember Mr. Banerji coming into the court-room at that time. The money was collected in currency notes and he did not see any pleader counting those notes.

*Sir Tej Bahadur Sapru* : I suggest to you that it was Mr. K. N. Banerji who counted those notes.

*Witness* : I do not remember if Mr. K. N. Banerji counted the notes.

*Witness* added that the money was probably put into the hands of Mr. Gupta by *pairoḱars* who had made the collection. He told Mr. Gupta that he should pay the money to the War Fund Secretary. Mr. Gupta told witness the next day that he had paid the money to the War Fund Secretary. He did not tell witness that he had taken a receipt from the Secretary.

*Sir Tej Bahadur Sapru* : Do you know, in point of fact, when the receipt was given?

*Witness* : I do not know when the receipt was given or whether any receipt was given.

*Sir Tej Bahadur Sapru* : Do you know if the receipt was given or intended to be given on or after September 14?

*Witness* : I do not know whether the receipt was given on or after September 14.

*Sir Tej Bahadur Sapru* told the Chief Justice that the receipt was intended to be given after the contempt proceedings were over.

*Third Hearing (Contd.)*

*Chief Justice* : Is it a fact that the receipt was intended to be given after the contempt case was over in the High Court?

*Witness* : I do not know anything about the receipt.

*Sir Tej Bahadur Sapru* : All this happened on July 31?

*Witness* : Yes.

*Chief Justice* : Was it your idea to collect funds, or did somebody ask you to raise subscriptions for the war fund?

*Witness* : I have been doing it as a private citizen out of court myself. The war fund secretary told me a week before that I must also do something and accelerate my efforts.

#### WHY CORRESPONDENT WAS CALLED

*Sir Tej Bahadur Sapru* : I suppose you are in the habit of reading the *Hindustan Times*?

*Witness* : No, I am not in the habit of reading the *Hindustan Times*.

*Sir Tej Bahadur Sapru* : Which is your favourite paper?

*Witness* : I read the *Leader*.

*Sir Tej Bahadur Sapru* : Was your attention drawn to any news or comments either in the *Hindustan Times* or in the *Leader*, which is now part of the record?

*Chief Justice* : Is it in the *Leader* also?

*Sir Tej Bahadur Sapru* : I mentioned it in my affidavit.

*Chief Justice* : The correspondent being the same, the same news appeared in the *Leader*?

*Sir Tej Bahadur Sapru* : Yes. We can't say in which other newspaper it appeared.

*Witness* stated that his attention was drawn on the evening of August 3 to the news which had appeared in the *Hindustan Times* of that date. He noticed that that news was from a correspondent in Meerut. He read that item of news on August 4.

*Third Hearing (Contd.)*

*Sir Tej Bahadur Sapru* : And you therefore considered it necessary to call Mr. Singhal to your chamber?

*Witness* : Yes.

*Sir Tej Bahadur Sapru* : When you read these comments in the *Hindustan Times* did you suggest to any practising advocate in your court that he might issue a contradiction of the fact alleged in it?

*Witness* : No.

*Sir Tej Bahadur Sapru* : I suggest to you that having realised that Mr. Singhal had been unfair to the Chief Justice you never said a word to any pleader in your court to convey the message to him that he had been unfair to the Chief Justice and that he must make a correction?

*Witness* : I did not say anything to anybody.

*Sir Tej Bahadur Sapru* : Do you think that you would have been guilty of any impropriety consistently with your anxiety to be fair to the Chief Justice in telling the pleaders who attend your court to convey the message to Mr. Singhal that he had been unfair to the Chief Justice?

*Witness* : No.

*Sir Tej Bahadur Sapru* : If you did not tell the pleaders, could you kindly tell us if you ever brought the matter to the notice of Mr. Akbar Husain?

*Witness* : I did not bring the matter to the notice of Mr. Akbar Husain.

*Sir Tej Bahadur Sapru* : You did not consider it necessary in the interests of the reputation of the Allahabad High Court and the Chief Justice of the High Court that you should officially bring this matter to the notice of the Chief Justice through the Registrar that the reporter had sent an item of news which was wholly unfair to the Chief Justice?

*Witness* : No, I did not, because I knew that the Chief Justice and the Registrar must themselves have read it.

In reply to further questions witness said that the copy of the



*Third Hearing (Contd.)*

affidavit filed by Mr. Devadas Gandhi was given to him on Sept. 10 and he did not know all the allegations that would be in that affidavit up to that day.

*Sir Tej Bahadur Sapru* : Had you any reason to know of any allegation which might be there in the affidavit?

*Witness* : I had reason to know of some of the allegations to be made in the affidavit.

## STENOGRAPHER'S NOTE TO SINGHAL

Witness was shown the slip left by his stenographer for Mr. Singhal and he said that he could not recognize his handwriting. He added that he never told Mr. Yunus Khan that he wanted to see Mr. Singhal because he wanted to consult him about any "particular matter." As a judge he was not in the habit of consulting reporters of newspapers. Mr. Yunus Khan had no authority on his behalf to say that he wanted to consult Mr. Singhal about any "particular matter." Witness did not remember to have seen Mr. Singhal in his court-room between August 5 and 13. On the 5th he asked Yunus Khan to ask Mr. Singhal to see him in his chamber.

*Sir Tej Bahadur Sapru* : I put it to you, Mr. Vidyarthi, that you actually met Mr. Singhal and Gauri Shankar on August 13?

*Witness* : No.

*Sir Tej Bahadur Sapru* : I suggest to you that Mr. Singhal was taken to your house by Gauri Shankar on August 13?

*Witness* : It is not a fact.

Witness admitted that there was a distant relation of his in Meerut called Ganga Prasad but denied that he tried through him to approach Mr. Singhal and for that reason asked him to persuade Gauri Shankar to see Mr. Singhal and take him to the house of witness.

*Sir Tej Bahadur Sapru* : Can you suggest any reason why Mr. Singhal sent a false report against you as to what happened in court on July 31 during the trial of the Dhakoli murder case?

*Witness* : It may be due to some misunderstanding based on

*Third Hearing (Contd.)*

some conjectures and surmises and once they took up that position, they adhere to the same.

*Sir Tej Bahadur Sapru* : What do you mean by misunderstanding? Do you suggest that he might have misunderstood what you said or do you suggest that there was some ill-will between you and him?

*Witness* : There is no ill-will between him and me. My impression is that he was not present in court, but depended upon hearsay to make a report.

Witness proceeding said that once before Mr. Singhal has made an incorrect report. It was a criminal appeal. Two persons were sentenced to six months by the lower court and witness had converted their sentence of imprisonment into one of fine. One of the appellants wanted time to pay the fine. As the judge was doing other work the reader said that he could not bring the matter to the notice of the judge at that time. The appellant then shouted out loudly and disturbed the judge in his work. It was reported in the *Hindustan Times* that the judge took him into custody. As a matter of fact he did not take him into custody. The judge did not consider the matter so important as to take any notice of it. If Mr. Singhal had met the judge when he called him he would have drawn his attention to this fact also.

*Sir Tej Bahadur Sapru* : When you read the comments in the issue of August 5, did you realise the gravity of the situation? Did you realise that it might lead to some inquiry about yourself?

*Witness* : When I read the comments in the *Hindustan Times*, I did not realise that it would lead to an inquiry about myself.

*Sir Tej Bahadur Sapru* : And even then you did not talk about this matter to Mr. Akbar Husain?

*Witness* : I did not talk about this matter to Mr. Akbar Husain. I did not meet him until September 1.

Witness stated that on September 1 Mr. Akbar Husain had

*Third Hearing (Contd.)*

called him to his chamber and said to him that Mr. Banerji had told him on the previous day that Mr. Devadas Gandhi had come to Meerut and was asking him to give an affidavit of the fact that witness had raised subscriptions in court. On September 1, witness told Mr. Akbar Husain that he had raised subscriptions in court and he realized afterwards that it was not proper for him to have done so. He denied having made the statement which was attributed to him. Mr. Banerji was present when the conversation between witness and Mr. Akbar Husain took place.

*Sir Tej Bahadur Sapru* : And you denied to Mr. Akbar Husain, in the presence of Mr. Banerji, the statement attributed to you, namely, that you had in court mentioned the name of the Chief Justice and His Excellency the Governor in connection with the war subscriptions

*Witness* : Yes.

*Sir Tej Bahadur Sapru* : Did you suggest to Mr. Akbar Husain that he might kindly communicate to the High Court what you had stated to him in his chamber?

*Witness* : No, I did not.

### JUDGE'S VISIT TO ALLAHABAD

*Sir Tej Bahadur Sapru* : After having had that conversation with Mr. Akbar Husain in his chamber, "did it occur to you that in your interest he might communicate the whole matter to the Registrar of the High Court or to the Chief Justice?"

*Witness* : On September 1, Mr. Akbar Husain asked me to see the Chief Justice and to tell him the facts. At his suggestion I came to Allahabad, but a gentleman told me that it would be very improper to see the Chief Justice and say anything about the case which was pending before him. So I did not see him.

*The Chief Justice* : All that I can say is that you did the right thing.

*Sir Tej Bahadur Sapru* : Did Mr. Akbar Husain tell you that

*Third Hearing* (Contd.)

Mr. Bharadwaja, Assistant Editor of the *Hindustan Times*, had seen him?

*Witness* : On September 2, Mr. Akbar Husain told me that Mr. Bharadwaja had seen him.

*Sir Tej Bahadur Sapru* : Did Mr. Akbar Husain tell you what complaint Mr. Bharadwaja had made to him?

*Witness* : Yes, Mr. Akbar Husain said that Mr. Bharadwaja had told him that the statement of a pleader had been taken by pressure.

*Sir Tej Bahadur Sapru* : I take it that you, of course, deny that you exercised any pressure?

*Witness* : I never exercised pressure on any pleader for taking any written statement. The pleaders gave their statements to me of their free will and accord. As a matter of fact one of them sent his written statement from his house and did not write in my chamber.

*Sir Tej Bahadur Sapru* : You said that you destroyed these statements because it occurred to you that they were improper. If you had preserved those statements, would it have been more improper?

*Witness* : It was only to correct my impropriety that I destroyed those statements.

*Witness* only learnt from the affidavit of Mr. Devadas Gandhi that Mr. Swami resented his having called his son-in-law to the chamber of witness. As a matter of fact witness had also called Mr. Swami to his chamber, but as he was busy he could not come. Witness would have attached the same importance to the written statement of Mr. Swami as he did to the written statement of his son-in-law.

Witness stated that Mr. Krishna Sarup was a very junior pleader and he had also called the seniormost pleader, Mr. Gopi Nath Sinha, on September 1. He also took the statements of Mr. Baljit Singh and one other gentleman,

*Third Hearing (Contd.)*

*Sir Tej Bahadur Sapru* : When did you realize after taking the statements that it was improper for you to have taken those statements in writing ?.

*Witness* : A few days after, I realized it.

*Sir Tej Bahadur Sapru* : Did you bring this matter to the notice of Mr. Akbar Husain ?

*Witness* : I did bring this matter to his notice.

*Sir Tej Bahadur Sapru* : Did he point out to you the impropriety of it ?

*Witness* : I showed the written statements to Mr. Akbar Husain, but he did not say one word.

*DISTRICT JUDGE'S EVIDENCE*

Mr. Akbar Husain, the District Judge, was next examined by the court. He said he had read the copy of the affidavit of Mr. Devadas Gandhi. Mr. K. N. Banerji met him at a tea party. He said that he wanted to see witness at his house. Witness told him that if he had anything of importance to tell him he should do so in his chamber, and it was then that Mr. Banerji came to his chamber. Mr. Banerji said that he was worried about the collections of war funds by Mr. Vidyarthi. He said that he had been asked to give evidence about certain matters by Mr. Devadas Gandhi. The fact was that he had no personal knowledge about the matter. Witness told him that he need not worry if he had no personal knowledge about the matter, and he went away.

Continuing, Mr. Akbar Husain deposed that Mr. Vidyarthi also saw him in connection with this matter. So far as he remembered, while Mr. Banerji was still in the chamber Mr. Vidyarthi came to him. He believed that he sent for Mr. Vidyarthi and asked him about the matter. Mr. Vidyarthi said that he wanted to hide nothing. He said that he had made a mistake which he very much regretted and that all that he could say in his defence was that he had acted in absolute good faith. He said that in murder or similar cases after he had pronounced judgment he suggested to the pleaders to call the accused persons who had been acquitted that

*Third Hearing (Contd.)*

they might, as a token of their thankfulness, contribute something to the war fund and that as a result of this suggestion a sum of about Rs. 500 had been paid by the persons who were acquitted. He said that he felt afterwards that he had acted improperly in attempting to realize subscriptions in that manner and that he was very sorry for it. He said the allegation that he stated that the High Court or the Government had issued instructions to judicial officers that they should assist in the collection of subscriptions was an absolute falsehood.

*Chief Justice :* Was Mr. Banerji present at the time when Mr. Vidyarthi made this statement?

*Witness :* I do not remember. Mr. Banerji had probably left.

Witness said that Mr. Bharadwaja, Assistant Editor of the *Hindustan Times*, had an interview with him. He came and said that he had come to see the judge, because he had been informed on the telephone by his local correspondent that Mr. Vidyarthi had been using undue influence to get lawyers practising in his court to make a statement to the effect that he had not made the statement ascribed to him. Witness told Mr. Bharadwaja that he could not believe it, because Mr. Vidyarthi had already seen him and made what witness considered to be a very frank and straightforward statement about what had happened and witness thought that the local correspondent had been sending him false and mischievous information. Then Mr. Bharadwaja went away.

Cross-examined by Sir Tej Bahadur Sapru, Mr. Akbar Husain said that Mr. Banerji was present when he called Mr. Vidyarthi and he stayed on up to a certain point of the conversation and then went away. It was difficult for him to say what it was that Mr. Vidyarthi said while Mr. Banerji was there.

*Sir Tej Bahadur Sapru :* But perhaps you will agree that part of the conversation between you and Mr. Vidyarthi took place during the presence of Mr. Banerji?

*Witness :* Yes.

*Sir Tej Bahadur Sapru :* When Mr. Vidyarthi told you that

*Third Hearing (Contd.)*

he had made a mistake, did he mean by that that he had mentioned the name of the Governor and the Chief Justice or did he mean that he had been raising war subscriptions in court?

*Witness*: What he actually said was that the error on his part lay in the fact that he had used the occasion of the acquittal of certain accused persons in a criminal case for realizing subscriptions to the war fund.

*Chief Justice*: Did he admit that the mistake lay in the fact that he had mentioned the name of the Governor and the Chief Justice?

*Witness*: There was no occasion for him to say that he had had instructions from the Governor and the High Court to assist in the collection of subscriptions to the war fund.

*Sir Tej Bahadur Sapru*: Did he himself say that the allegation that he had been asked by the Governor or by the Chief Justice to raise subscription was untrue or did you ask him anything about the allegation?

*Witness*: It is difficult for me to say. I have no precise recollection whether it was one way or the other.

Witness said that he never read the comments, and his information was very vague. He believed that Mr. K. N. Banerji told him at the tea party that he was being asked by or at the instance of Mr. Devadas Gandhi to say that he heard Mr. Vidyarthi saying that he had instructions from the Governor and the High Court to assist in the collection of subscriptions to the war fund.

*Sir Tej Bahadur Sapru*: And I suppose Mr. Banerji probably conveyed the impression on your mind that he was not present at the time when Mr. Vidyarthi was reported to have referred to the Chief Justice and the Governor?

*Witness*: Mr. Banerji told me definitely that he was not present when Mr. Vidyarthi was alleged to have made the statement about the alleged instructions from the Governor and the High Court.

*Sir Tej Bahadur Sapru*: Did he tell you about Rs. 200 being

*Third Hearing (Contd.)*

collected in the court-room on the day that judgment was pronounced?

*Witness:* He said that a sum of money had been collected when he went to Mr. Vidyarthi's court-room.

*Witness* was not told by Mr. Banerji that he had himself counted the notes, nor that he had himself placed the money on the table of the Judge.

It was from Mr. Bharadwaja that he first learnt that Mr. Vidyarthi had taken down the statements in writing of Mr. Krishna Sarup or some other pleaders.

*Sir Tej Bahadur Sapru:* After hearing from Mr. Bharadwaja did you refer the matter to Mr. Vidyarthi?

*Witness:* I did not consider it necessary to do so, because I was quite convinced that the allegation was wholly without any foundation or truth. Mr. Vidyarthi had already made a frank and, what I thought, an honest admission of his error to me and he said that he was prepared to admit it before the highest authority. There remained thus no occasion for him to attempt to get anyone to make any particular statement in writing beforehand.

*Sir Tej Bahadur Sapru:* Do you know that as a matter of fact Mr. Vidyarthi took down some statements from pleaders?

*Witness:* He told me that he had taken some written statements from some pleaders. He said that he had to safeguard his interest against what he considered a campaign of vilification which was afoot.

*Sir Tej Bahadur Sapru:* Against whom?

*Witness:* Against everybody.

*Sir Tej Bahadur Sapru:* You never took any further interest in the matter after that?

*Witness:* It is difficult for me to say that I had no further interest in the matter.

*Witness* proceeded to state that Mr. Banerji had seen him again very recently, and he had only come to repeat that he had no



*Third Hearing (Contd.)*

personal knowledge of the alleged statement which was attributed to Mr. Vidyarthi. He did not ask Mr. Banerji why he should worry.

*Sir Tej Bahadur Sapru* : Did his conversation leave the impression upon your mind that he was being pressed by Mr. Devadas Gandhi or his people to make a certain kind of statement? }

*Witness* : The impression that I had from what he told me was that he was being pressed by Mr. Devadas Gandhi to make a particular kind of statement.

*Sir Tej Bahadur Sapru* : And that is why he felt worried?

*Witness* : I suppose so.

Witness would have called Mr. Surajbal Swami and examined him, if it were not for the fact that Mr. K. N. Banerji told him that none had told him that he had actually heard Mr. Vidyarthi making the statement attributed to him.

The case was then adjourned till the 25th instant.

### JUDGE ON TRIAL "IN A WAY"

Shortly after the hearing of the case, the Chief Justice sent for Sir Tej Bahadur Sapru and the respondents and in their presence, addressing Mr. Vidyarthi, said that in a way he (Mr. Vidyarthi) was also on trial and that he would, therefore, be allowed to produce witnesses, if he liked.

Mr. Vidyarthi said he would submit the names of his witnesses.

## SUMMONS FOR WITNESSES

### Both Sides Apply

ALLAHABAD, Sept. 17.

An application was made before his lordship the Chief Justice yesterday by Sir Tej Bahadur Sapru (with Messrs. K. D. Malaviya and Gopalji Mehrotra), on behalf of Messrs. Devadas Gandhi and Devi Prasad Sharma, the Editor and the Printer and Publisher of the *Hindustan Times*, praying that in the contempt case the following witnesses be summoned for September 25 : Mr. K. N. Banerji and Mr. Surajbal Swami, Advocates of Meerut ; Dr. D. L. Dubey, Professor of Economics, Meerut College ; Mr. Gauri Shankar ; Mr. R. L. Singhal, Press Correspondent of Meerut ; Pandit Krishna Swarup Sharma, Advocate of Meerut ; and Mr. D. D. Bharadwaja, Assistant Editor of the *Hindustan Times*, New Delhi. Two or three more witnesses whose addresses were not known would be produced on the date, if necessary.

His lordship granted the prayer.

### ADDITIONAL JUDGE'S WITNESSES

Today an application was made before the Chief Justice by Mr. S. A. Rafique, on behalf of Mr. Harishankar Vidyarthi, Additional Sessions Judge of Meerut, in which it was stated : "That in the abovementioned case, in pursuance of the direction of the Hon'ble High Court, it is humbly prayed that the following witnesses be summoned on behalf of the petitioner to appear and depose on September 25 and 26 in this Hon'ble Court : (1) Mr. S. C. Gupta, Bar-at-Law, Kutchehry, Meerut ; (2) Rai Saheb Motilal, Government Pleader, Kutchehry Road, Meerut ; (3) Pandit Brahmajit Sharma, B.A., LL.B., Advocate, Meerut, and (4) Mr. Gajraj Singh, Mukhtar, Collectorate, Meerut. One or two witnesses may be further produced, if found necessary."

His lordship ordered as prayed.

## EVIDENCE OF DEFENCE WITNESSES

### Meerut Correspondent Also To Stand Trial

ALLAHABAD, Sept. 25.

The Chief Justice and Mr. Justice Collister resumed the hearing of the *Hindustan Times* contempt case today. Sir Tej Bahadur Sapru assisted by Messrs. K. D. Malaviya, Gopalji Mehrotra, Kripa Narain (Delhi), and Gopinath Sinha (Meerut) appeared for the respondents.

### POSITIVE CASE

His lordship the Chief Justice inquired from the Rt. Hon. Sir Tej Bahadur Sapru, whose witnesses should be examined first by the court as both Mr. Gandhi and Mr. Vidyarthi had summoned their evidence. His lordship pointed out that the question was a bit difficult. In one sense contempt proceedings were quasi-criminal proceedings and the position of Sir Tej Bahadur Sapru's client was that of an accused and he was entitled to insist that the prosecution evidence should be finished before he was called upon to enter his defence. The other view was this, that Mr. Vidyarthi had denied having said something in court. In these circumstances should a party putting forward a positive case be called upon to give evidence first?

*Sir Tej Bahadur Sapru* : I have myself considered this matter and personally I am inclined to produce my witnesses first for the very reason mentioned by your lordship, namely, that my case is a positive case.

### NOTICE SERVED ON SINGHAL

*Chief Justice* : There is one other matter that is creating some difficulty. The essential part of your case is that whatever comment

*Fourth Hearing (Contd.)*

you made was based on certain information supplied to you by your correspondent at Meerut, Mr. Singhal. If your case is proved, the matter ends. Suppose on a consideration of the entire evidence in the case we come to the conclusion that your case is unproved in the sense that Mr. Vidyarthi had never uttered those words which he is alleged to have done, Mr. Singhal in that case will primarily be guilty of contempt of court and he being the person who sent the information will have to be called upon to show cause why he should not be dealt with for contempt. That would mean a multiplicity of proceedings. After this proceeding is finished then a fresh notice to Mr. Singhal will have to be issued. Is it not desirable that if Mr. Singhal is present in court he may accept notice which we may issue just now and the whole proceeding may continue and come to an end and the decision may be arrived at on the evidence?

## FIRST WITNESS

Sir Tej Bahadur Sapru said that his very first witness would be Mr. Singhal and he was prepared to advise Mr. Singhal to accept notice now. If Mr. Singhal was prepared to instruct him, Sir Tej Bahadur said, he would represent him. A few minutes later Sir Tej Bahadur told the Chief Justice that Mr. Singhal was prepared to accept notice and Mr. Singhal wanted him to appear for him.

Thereupon their lordships issued notice to Mr. Singhal, the correspondent of the *Hindustan Times* at Meerut, to show cause why he should not be dealt with for contempt of the High Court with respect to the news published in the *Hindustan Times* of Sunday, August 3, 1941, on information supplied by him. Mr. Singhal, who was present in court, accepted notice.

## EVIDENCE TO BE COMMON

Sir Tej Bahadur stated that Mr. Singhal's case might be heard along with the case of Mr. Devadas Gandhi and that the evidence which would be produced by him would be the evidence on behalf of Mr. Devadas Gandhi as well as on behalf of Mr. Singhal. Sir Tej Bahadur further stated that even though the evidence of

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Mr. Vidyarthi and Mr. Akbar Husain was recorded at a time when notice was not issued to Mr. Singhal he had no objection to that evidence being treated as evidence also against Mr. Singhal, provided he was allowed to put a few supplementary questions in cross-examination to Mr. Vidyarthi. Mr. Singhal was then examined as a witness.

## MR. SINGHAL'S EVIDENCE

Mr. R. L. Singhal, examined by the Rt. Hon. Sir Tej Bahadur Sapru, said that he was the local correspondent at Meerut of the *Hindustan Times*, the *Leader*, the *Pioneer*, the *National Herald*, the *Hindusthan Standard* and some vernacular papers. He sent news items, sometimes by telegram and sometimes by letters. In his capacity as correspondent he sometimes attended the courts at Meerut. He was present in the court of Mr. Vidyarthi when the judge delivered judgment in the Dhikoli murder case. The judge did not read out the whole of the judgment. He only pronounced sentence on four of the accused and then kept silent for a minute or two. He then sent for the accused against whom complaints were filed. Those accused then moved forward and then there were some side talks between the judge and those accused who had moved forward. He was not able to understand the conversation, nor did he hear it. The judge then said: "Since the Chief Justice who has been requested by his Excellency the Governor to help in the war effort has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work." The judge further said: "I am not using any pressure." He made these observations facing the lawyers and the accused who had moved forward and some others. Then consultations followed among the lawyers and some of the persons who had come forward and other persons and then currency notes of the value of Rs. 200 were produced in the court-room. He did not see anybody counting the currency notes. He had, however, heard Mr. Banerji, Advocate, saying that he had verified the numbers of the notes. The notes were put on the judge's table. He did not remember who put those notes on the table of the judge.

Proceeding, Mr. Singhal said that he had asked the judge to let him have the judgment in the murder case to copy out some of

*Fourth Hearing (Contd.)*

his observations. He made this request to Mr. Vidyarthi after he had pronounced judgment as regards the remaining 16 accused as well. The judge said that the judgment was not ready. The judge inquired from him as to who he was. Before he could answer, Mr. Banerji told the judge that he was the correspondent of the *Hindustan Times* and some other papers. After this conversation witness left the court.

Witness said that he had sent the news to the *Hindustan Times* on the next day (August 1) and the news appeared in the issue dated August 3. He read the comment which appeared in the *Hindustan Times* of August 5 based upon his news. Witness went on to say that Mr. Yunus Khan, stenographer to Mr. Vidyarthi, left a *chit* at his house asking him to meet the judge at his parlour. A man of the name of Gauri Shankar came to him on August 9 or 10 and he wanted witness to go and meet Mr. Vidyarthi at his residence. He did not agree, but when pressed by Mr. Gauri Shankar he agreed to go. On August 13 he met Mr. Vidyarthi at his house. Mr. Ganga Prasad came to him four or five days after he had been to Mr. Vidyarthi's house. He asked witness whether he had mentioned the name of Mr. Vidyarthi to the *Hindustan Times* and witness told him that he had mentioned.

At Mr. Vidyarthi's house they first talked on general topics. Mr. Vidyarthi then referred to the news which had appeared in the issue of August 3. The judge said that it had been very nicely and correctly written. He then referred to the comment which appeared in the issue of August 5 and said it too was well written. He then requested witness not to disclose his name or mention his court in case any inquiry was made. Witness said he would not do so. (To court : Actually I had done so). He had written a letter to the Editor of the *Hindustan Times* on August 11 or 12 disclosing the name of Mr. Vidyarthi. Witness had told Mr. Vidyarthi on August 13 that he would not disclose his name in order to avoid discussion with him. He did not see Mr. Vidyarthi again after August 13. He was in the habit of reporting cases from Mr. Vidyarthi's court in the *Hindustan Times*. Mr. Vidyarthi had never called him on any previous occasion to tell him that there was anything wrong with any report of his. The comments based on his

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news were written in the office of the *Hindustan Times* at New Delhi and witness had nothing to do with any comment. There were never any complaints from the Editor of the *Hindustan Times* or of any other paper of which he was the Meerut correspondent, that the reports sent by him were untrue. He had been working as a correspondent for about eight years and he had been correspondent of the *Hindustan Times* during this period. He was a member of the civic guard at Meerut.

Witness, in reply to another question put by Sir Tej Bahadur Sapru, stated that the judgment against the remaining 16 accused was pronounced by Mr. Vidyarthi after the collection of Rs. 200 to the war fund.

## CROSS-EXAMINATION

Cross-examined by Sir Wazir Hasan on behalf of Mr. Hari Shankar Vidyarthi, Additional Sessions Judge of Meerut, Mr. Singhal said that his work as a correspondent was not confined to courts at Meerut. He did not remember whether he had reported any other item of news from Meerut on July 31 and he did not remember whether he had visited other places that day for the purpose of getting news. He could not say anything about the policy of the *Hindustan Times* in regard to the war effort. Comments were made in that paper now and then with respect to the war effort. He had often read such comments but he could not definitely remember anyone of them, which might show that the policy of the paper was opposed to the war effort. His statement that he went to Mr. Vidyarthi's residence on August 13 would be corroborated by Mr. Gauri Shankar. Witness wrote a letter on August 11 or 12 to the Editor of the *Hindustan Times*.

*Question:* When you told the judge that you would not disclose the judge's name you told a lie?

*Answer:* When I told the judge that I would not disclose his name I told an untruth.

He said that he had also attended other courts at Meerut besides the court of Mr. Vidyarthi. When Mr. Vidyarthi

*Fourth Hearing (Contd.)*

pronounced the sentence on four of the accused persons and deferred delivering judgment as regards the rest, there were present in the court-room Mr. K. N. Banerji, Mr. Surajbal Swami and others whose names he did not know. The judgment was delivered at about 3-30 p.m. and 15 minutes later he delivered the judgment as regards the remaining 16 accused. He had got no idea as to how the sum of Rs. 200 was raised, that is, he could not say how much was contributed by individual persons. The four persons who were convicted were then still in the court-room. No lawyer present in court protested against the manner in which subscriptions had been raised by the judge.

Witness stated that he did not help Mr. Devadas Gandhi in making his inquiry when he came to Meerut. He could not say definitely whether Mr. Devadas Gandhi had made any inquiry before receiving notice from the High Court. He did consider the news about the Chief Justice being requested by his Excellency the Governor to assist in war fund collection as a news of great significance as it was calculated to give a fillip to the war effort. He had no opinion of his own as to whether a fillip to the war effort should or should not be given.

Witness said that he had known Mr. Gauri Shankar for a long time. He was a public worker in Meerut and was not a friend of witness. The man was associated with several organizations with which witness was not associated. Witness had talked with Mr. Banerji on several occasions after he had reported the incident in court.

*Sir Wazir Hasan* : I suggest to you that in fact no part of the judgment was read piecemeal and that the whole of it was delivered or pronounced after 4 o'clock.

*Witness* : It was delivered piecemeal. The suggestion is incorrect.

Witness added that he saw with his own eyes that the currency notes were put on the judge's table, but he could not say who did that.



*Fourth Hearing (Contd.)*

### BY THE COURT

Examined by the Chief Justice, witness stated that barring the headlines and the word "new" before the words "Chief Justice" the whole of the news published in the *Hindustan Times* of August 3 was exactly the same as supplied by him. Asked why he put the word "efforts" in inverted commas in the first paragraph of the news witness stated that it was because by "efforts" he meant war efforts. The Chief Justice drew the attention of witness that the words "war efforts" had immediately preceded the word "efforts" and asked why, then, inverted commas became necessary. Witness replied that the whole stress was on war efforts.

*The Chief Justice* : Is it or is it not a fact that it has been the confirmed policy of the *Hindustan Times* to oppose war efforts?

*Witness* : I think it has not been its confirmed policy to oppose war efforts.

*The Chief Justice* : Is it a fact that the word "efforts" was put in inverted commas in order to emphasize its policy?

*Witness* : No.

He said that he had supplied the same item of news to the other papers of which he was a correspondent and as far as he remembered the *Leader* published the first two paragraphs. The *Pioneer* published the judgment and he was not sure whether that paper had also published the first two paragraphs.

*The Chief Justice* : Why did you in the first paragraph use the guarded words "I reliably learn," "it is understood"?

*Witness* : Because I was not mentioning the source of my news.

Asked when Mr. Devadas Gandhi had correspondence about the case for the first time with witness, he replied that he had received a letter from the Editor either on August 10 or 11 asking him to mention the source of the information on which the news item referred to above was based. He did not till then know that notice had been issued by the High Court to the Editor and Printer. He came to know about it on August 13 from Mr. Vidyarthi. He sent

*Fourth Hearing (Contd.)*

a reply to that letter forthwith. He mentioned in his reply that Mr. Vidyarthi had used the words attributed to him in open court. He had despatched that reply before he met Mr. Vidyarthi on August 13. Probably he did not receive any letter from the Editor after his reply. After that Mr. Gandhi came to Meerut on August 31. There was no correspondence between witness and the Editor between August 13 and 31. He met Mr. Gandhi at Meerut on August 31 at Prof. Dubey's house. He told him that he had come to make inquiries about the matter.

Had he reason to suspect the veracity of the information contained in the reply sent by you?—I cannot say anything about it.

Then why did he need verification of the information supplied by you?—This question too I cannot answer.

Witness stated that probably Mr. Gandhi left Meerut on the evening of August 31 and it was not within his knowledge if he revisited Meerut. Mr. Banerji told witness that he had met Mr. Gandhi at Prof. Dubey's house and that was how he came to know about it. Mr. Gandhi did not tell him anything about the steps he was taking to verify the information given by witness.

The sole object of Mr. Gandhi was to verify the truth of the information given by you?—He told me so.

Did you then ask him why he attempted to get veracity of your statement?—I did not put any question to him.

Did Mr. Gandhi on August 31 inquire from you as to what evidence will be available to support your statement?—He did not inquire from me on that date. But on August 11 or 12 when I wrote a reply to him I had mentioned the names of the lawyers present in the court.

Was any attempt made by you or any person connected with the *Hindustan Times* from August 10 till today to get in touch with persons who may possibly appear as witnesses in these proceedings? No attempt was made by me, nor do I know of any attempt by any other person.

Witness said that he had received the slip of Mr. Yunus Khan

*Fourth Hearing (Contd.)*

on August 5. He did not comply with the request contained in the slip firstly, because he was busy with the civic guard and the A.R.-P. in Meerut and, secondly, because he wanted to avoid the judge. Asked why he wanted to avoid meeting Mr. Vidyarthi, witness said it was for no particular reason.

Can you suggest any reason whatsoever?—I cannot suggest any reason for avoiding to meet the judge except that I was very busy during those days.

Is it a fact that the avoidance was due to a guilty conscience?—No, my lord.

Witness said that when he visited Mr. Vidyarthi on August 13 he was accompanied by Mr. Gauri Shankar. He went to him at 7-30 a.m. The judge told him not to disclose his name. Mr. Vidyarthi informed him about the issue of the notice by the High Court after he had assured him that he would not disclose his name.

Did you not then think it prudent to tell him that as the matter had reached that stage it was impossible for you to hold out the promise that you would not disclose his name?—As I had already disclosed his name to the *Hindustan Times* I did not say anything to him.

### MR. GAURI SHANKAR'S EVIDENCE

When the oath was being administered to Mr. Gauri Shankar, the next witness, by the bench reader of the court, he said that he had no faith in God. The witness was then put on solemn affirmation without the mention of God.

Examined by Sir Tej Bahadur Sapru, witness stated that on being told by Babu Ganga Prasad that he should ask Mr. Singhal to go and meet the judge, he met Mr. Singhal. Mr. Singhal then told him that as the function of civic guards was to take place he could not meet the judge the next day. Witness was asked to inform Babu Ganga Prasad that Mr. Singhal would meet the judge the day after. On the third day both Mr. Singhal and witness went to the judge's house on bicycles. Mr. Vidyarthi then told Mr. Singhal that the news that he had supplied to the *Hindustan Times* was very

*Fourth Hearing (Contd.)*

good and perfectly correct and Mr. Singhal had great control over the English language. He also said on the occasion that nobody liked to raise subscription, but circumstances compelled one to do so. He further told Mr. Singhal that if the editor made any inquiries from Mr. Singhal, Mr. Singhal should show them to Mr. Vidyarthi. Mr. Vidyarthi further asked Mr. Singhal not to mention his or his court's name. Mr. Singhal said that no inquiry had till then been made and if an inquiry was made in future he would show it to him. Thereafter, when they were about to leave Mr. Vidyarthi's house, the judge told them that the High Court had issued notice for contempt against the *Hindustan Times*.

## CROSS-EXAMINATION

Cross-examined by Sir Wazir Hasan on behalf of Mr. Vidyarthi, witness said that he could not say why Babu Ganga Prasad took him to the judge's house. He had never met Mr. Vidyarthi before that. Witness was one of the accused in the Meerut conspiracy case. He was sentenced to three years, but had been acquitted by the High Court. He was recently convicted under the Defence of India Rules and sentenced to six months. He had no particular conversation with Mr. Vidyarthi concerning the present case. Mr. Singhal was not associated with witness in his public work. At the time he met the judge witness was opposed to the war effort, but he had become neutral since Germany had commenced the war against Russia. Before the outbreak of these hostilities between Germany and Russia the whole of the Congress was opposed to war efforts of any nature. He had read the news in the *Hindustan Times* that was the subject of inquiry. He did not read the editorial note on the date when it appeared.

## BY THE COURT

Did you tell Mr. Ganga Prasad that he could himself talk to Mr. Singhal and your intervention was wholly unnecessary—I did not say so. He said that Mr. Vidyarthi had asked him to request me to persuade Mr. Singhal to see Mr. Vidyarthi.

At the time of your departure Mr. Vidyarthi told you that notice was issued by the High Court. Did you or Mr. Singhal

*Fourth Hearing (Contd.)*

tell him that in view of what had happened it was impossible for Mr. Singhal to withhold the name of Mr. Vidyarthi, or to make no reference to his court?—Neither I nor Mr. Singhal told Mr. Vidyarthi that in the circumstances it was impossible not to disclose his name.

Witness stated that after August 13 he never had any talk with Mr. Singhal about the notice. He had never met Mr. Devadas Gandhi. He knew Prof. Dubey. Prof. Dubey once told him that he and Mr. Bharadwaja had gone to the house of witness, but they did not find him.

Sir Tej Bahadur Sapru elicited in re-examination from the witness that he was a believer in the Russian system and that war with Russia had begun two months ago.

*Chief Justice* : Are you a Communist?

*Witness* : Yes.

### MR. DEVADAS GANDHI'S EVIDENCE

Examined by Sir Tej Bahadur Sapru, Mr. Devadas Gandhi said that the *Hindustan Times* was a daily newspaper published in Delhi and it was owned by a registered company. He was its editor. Mr. Bharadwaja was one of the assistant editors, and Mr. Subramanyan was the joint editor. They maintained a certain number of correspondents in different parts of the country. Their correspondent at Meerut was Mr. Singhal. He had been their correspondent for the last seven or eight years. His staff was quite big, and there was a particular department in the editorial staff which dealt with the news sent in by correspondents. It was invariably edited before it was printed. Asked to explain what exactly he meant by the word editing, witness said that the person concerned would normally first decide whether he was going to publish the news. He would then examine the language and put it right both in respect of its English as well as in respect of the policy of the paper. He would then give suitable headlines. The news in this case went as a matter of fact to the editorial staff and in the usual manner it was edited by

*Fourth Hearing (Contd.)*

some one. The news having appeared on August 3, somebody wrote the comment which appeared in the issue of the 5th.

When this news arrived in your office, had you any reason to suspect the honesty or veracity of your Meerut correspondent?—None whatever.

Counsel then drew attention of witness to paragraph 13 of his affidavit in which he had stated that he received complaints from some quarters that pressure had been exercised in regard to war fund collections and asked him if he had printed those complaints in his paper. Witness replied that he could not remember on the spur of the moment if they had printed any such complaints, but they had, off and on, drawn attention to such complaints in their editorial comments. They drew the attention of the public and of the Government, mainly of the Government. It was the policy of the *Hindustan Times* to uphold voluntary war effort, but they criticized and, if possible, exposed such war effort as might be carried on under pressure.

Do I take it that you in your paper have not hesitated to criticize any war effort which you had reason to believe was stimulated, or was brought about under official pressure?—Quite so.

Your paper generally represents the policy of the Indian National Congress?—My paper is not regarded in the country as officially or directly connected with the Congress but it has obvious Congress leanings.

And Congress sympathy?—And a good deal of sympathy for the Congress.

What exactly is the general policy of the Congress towards the war effort?—As I can see it, it is to oppose such war effort which might be carried on under pressure and to advocate a policy of allowing such men and women as do not see eye to eye with the British Government's policy in this country to exercise freedom of expression and function virtually as neutrals. I, however, have no official capacity entitling me to epitomize the policy of the Congress.

*Fourth Hearing (Contd.)*

Am I to take it that at present the policy of the Congress is dictated by your father, Mahatma Gandhi?—Largely.

Can you tell us exactly, or as nearly exactly as you possibly can, what advice he has given to the Congress *qua* the war effort?—I believe that his advice to Congressmen at present is that they should hold aloof from war effort.

Has he advised Congress to interfere with war effort of the Government?—On the contrary, he has expressed himself, I believe, more than once to the effect that Congressmen should take no active part this way or that in relation to the war but should exercise freedom of expression.

Am I to understand that that policy is really based on his belief in the doctrine of non-violence or on some other grounds?

*Chief Justice* : Is it necessary in this case to have an exposition of the Congress policy in detail?

*Sir Tej Bahadur Sapru* : I am not going to press beyond this question, but I consider it necessary because the editing of that news has been supposed to reflect the Congress policy.

*Mr. Devadas Gandhi* : He has based his advice to the Congress largely on his belief in non-violence.

Answering further questions put by Sir Tej Bahadur Sapru, witness said that as a newspaper they were in a peculiarly favourable position for receiving communications from members of the public and a good part of the communications they had been receiving since the commencement of the war related to pressure supposed to have been exerted on people in the matter of the war effort.

Do you recollect any statement issued about this either by the Government of India or by the provincial Government?—I do recollect speeches made by very responsible members of Government repudiating all suggestion that any compulsion was exercised in this country in regard to war effort.

When did you for the first time hear the news that this court had issued a writ of contempt against you?—I believe the writ was

*Fourth Hearing (Contd.)*

issued on August 8 and my correspondent in Allahabad sent me a telegram that same day.

But the news of the writ actually appeared in the issue of the *Hindustan Times* of the 14th?—Yes, it was not published before, because I preferred to await the writ of the court which, I was told, was on its way. I, however, published it on the 14th although I had not received the writ, because it had already appeared in the *Leader* of the 9th.

When was the notice issued by this court actually served on you?—I believe it was on August 25.

You said just now that your Allahabad correspondent sent a telegram that same day when notice was issued. After the receipt of that telegram from your Allahabad correspondent, did you make any inquiry from Mr. Singhal?—Some one from my office wrote a letter to Mr. Singhal.

Witness had in his possession the office copy of that letter dated August 9 and the reply of Mr. Singhal dated August 10 which were filed in court. The only serious inquiries witness made were after the receipt of the court's notice. On August 31 he went to Meerut, accompanied by Mr. Bharadwaja, assistant editor. They reached Meerut at 9 a.m. and proceeded to the residence of Prof. Dubey. Witness had not met him before but he happened to be known to Mr. Bharadwaja. His information was that Prof. Dubey was not and had never been a Congressman.

Am I right in saying that he is a public critic of the Congress?—I have not inquired into that aspect of his views.

Prof. Dubey was going to appear as a witness in the case. His first inquiry was whether Prof. Dubey knew Mr. R. L. Singhal and whether he could tell something about him from his personal knowledge. Mr. Dubey asked him what was the mission that had brought him to Meerut and witness told him what it was. Mr. Dubey informed him that Mr. Singhal was an upright and active young journalist known to and popular among all circles. He then requested Mr. Dubey to give him what help he could in connection with this case and in particular to satisfy himself that Mr. R. L.



*Fourth Hearing (Contd.)*

Singhal in sending this news was acting properly and truthfully. He mentioned to Prof. Dubey his information that Mr. Banerji and Mr. Surajbal Swami were present in court when this particular incident took place and witness asked Prof. Dubey if he could facilitate his meeting those gentlemen in order that he might be able to make further verification of the information supplied by Mr. Singhal. Mr. Dubey then went to see Mr. Banerji and returned a short while after and told him that Mr. Banerji corroborated every detail of the information he had received from Mr. Singhal in the letter that had been produced, but added that he had requested Mr. Banerji to meet Mr. Gandhi personally that afternoon and relate the facts to him himself. Mr. Banerji met him at tea time at 4 p.m. Witness asked Mr. Banerji if it was a fact that he was present in the court of Mr. Vidyarthi on July 31 when he pronounced the judgment in the Dhikoli murder case. Mr. Banerji told him that he was present and witness requested him with reference to the case that was pending, if he would be good enough to relate the facts to him in order to enable him to check Mr. Singhal's information. Mr. Banerji then said that he was not only present but that the whole of the incident that had taken place was the talk of the town in Meerut. But witness wished to be specific and requested him to give a first-hand account. Mr. Banerji then went on to tell him that he was present in court and while delivering judgment in the case Mr. Vidyarthi made precisely the statement that he had been informed he had made. He then requested Mr. Banerji to be good enough to repeat the language used by Mr. Vidyarthi as he was very anxious that there should be no misunderstanding. Mr. Banerji then repeated word for word the language which witness had put in his affidavit. He told him that it would help him in the case if he could file an affidavit along with witness'. Mr. Banerji said he did not think that an affidavit was necessary. Witness then asked him if he would relate those facts to him in a letter in order to help him in his defence. His reply was that if he wanted that he should write a letter starting with the words "Apropos your inquiry" the following are the facts etc. he would consider his request, but that he would give him his final answer later on. But Mr. Banerji added that in any event witness could rely on his help to speak the

*Fourth Hearing (Contd.)*

whole of the truth if summoned by the High Court. Witness pointed out that all this happened in the presence of Prof. Dubey and Mr. Bharadwaja, assistant editor. Mr. Swami was not present at the interview. Witness had not yet seen Mr. Swami. Mr. Bharadwaja had seen Mr. Swami. This conversation was over at 4-30 p.m. Leaving Mr. Bharadwaja behind, witness left Meerut for Delhi at night. Between 4-30 and 8 o'clock he carried on no further inquiry beyond his conversation with Prof. Dubey. He believed Mr. Bharadwaja reached Delhi next evening (September 1). Mr. Bharadwaja gave him a lengthy report of his inquiries, which included the conversation he had had with Mr. Swami and Mr. Banerji. Witness added that his next visit to Meerut was three or four days ago. He went to Meerut in connection with preparations of the case and, in particular, to meet Mr. Gopinath Sinha, advocate, in connection with the case. Mr. Sinha was now in Allahabad and was assisting the leading counsel in the case.

*Chief Justice* : What help did you want Mr. Gopinath Sinha to give you?—I knew Mr. Gopinath Sinha by name and fame as a leading lawyer and I expected that I would have to answer inquiries either from counsel or from the court, in which the advice and help of Mr. Gopinath Sinha might be of assistance to me.

*Chief Justice* : Did you ask for the collection of any evidence?—I do not think so.

About the time you received this news had you from any quarter received complaints that judicial officers were taking undue interest in the matter of collection of subscriptions?—I had heard numerous complaints of subordinate judicial officers making efforts to collect subscriptions to the war fund in a manner which I would not consider appropriate.

*Chief Justice* : In the Punjab?

*Witness* : Both in the Punjab and the U.P.

Witness stated that the headlines for the item of news sent by Mr. Singhal were given by the sub-editor, but the legal responsibility was of witness.

Sir Tej Bahadur referred to the headlines given—Judicial

*Fourth Hearing (Contd.)*

officers for war work—Raising subscriptions—New Chief Justice's circular?—and asked why a mark of interrogation was put after the word circular.

*Chief Justice*: Does a mark of interrogation make any difference in law?

*Sir Tej Bahadur Sapru*: Yes, my lord. The mark of 'interrogation shows that the man who wrote this thing had some element of doubt, and therefore he put this mark.

*Chief Justice*: Is it going to be your case, Sir Tej, that if there had been no mark of interrogation it would have been contempt?

*Sir Tej Bahadur Sapru*: No, my lord.

*Witness*: The news as it appears, purely from the point of view of a sub-editor, lends itself to the possible interpretation that it may be based on the existence of a circular.

Asked if 'efforts' was put in inverted commas by the correspondent himself Mr. Gandhi said it was not possible for him to answer the question without making further inquiries as to how the inverted commas came to appear.

### CROSS-EXAMINATION

Cross-examined by Sir Wazir Hasan, on behalf of Mr. Vidyarthi, witness said that the news was published without any further inquiry.

You have stated that a possible interpretation of the news item may amount to a statement of fact that the Chief Justice had issued such a circular. You did not consider it prudent and indeed necessary that before that was allowed to go into print you should make some inquiry about its truth or otherwise?—Work in a newspaper office, more particularly in the office of a daily newspaper, is carried on under conditions of great stress and strain. Nevertheless my newspaper office, as I believe other newspaper offices, do maintain a list of correspondents on which the fullest reliance can be placed and another of those whose news must be checked. Mr. Singhal belongs to the first list in my office and had it not come from him it would not have been published.

*Fourth Hearing (Contd.)*

If no notice had been issued, you would have accepted it as a true statement of fact and would have made no inquiry. In the preparation of your defence you started an inquiry?—It was only because of the issue of the notice that I started an inquiry into the matter, otherwise I would not have launched an inquiry immediately.

You were of the view that you will not be guilty of the offence of contempt of court if you were able to establish that the judge uttered those words which were attributed to him?—In the first place I was anxious to convince myself that the judge had uttered those words and it was only when I was morally convinced to the bottom of my heart that he had uttered those words that I felt, subject to legal advice, that it was my public duty to bring those facts to the attention of this hon. court regardless of their bearing on the case against me. As a layman I did take the view that if the facts could be established, that would be complete justification for my conduct and that I would be absolved of the charge of contempt.

Mr. Gandhi proceeding said he was in consultation with lawyers but took no serious action until he had received the writ from the court on August 25. He went to Meerut on August 31 and he was certainly in touch with lawyers by then.

*Sir Wazir Hasan* : Do you say that the item of news and your comment was not serious enough to make an inquiry before you published them, or they became serious because you had to meet this charge?

*Mr. Gandhi* : The news was published very reluctantly, but in the background of the complaints which we had been receiving and in view of the fact that the news came from a reliable correspondent it was not possible to disbelieve it and serious though it was, it was published as it was the function of a newspaper to give publicity to all kinds of news including serious news, if necessary.

Asked why the expression 'if it is true' was used in the comment, Mr. Gandhi said : As a matter of fact we were convinced of the truth of the news, but it was not our desire that the vast reading public of our paper should at the same time regard it as

*Fourth Hearing (Contd.)*

gospel truth since it obviously was a serious matter and hence the use of the word 'if'.

*Sir Wazir Hasan*: Whatever may be your confidence in Mr. Singhal you made the public understand that this was still a matter of doubt?

*Mr. Gandhi*: The paragraph was written in that particular form from a desire to be fair to the hon. Chief Justice. I did not desire that the public should take it as gospel truth.

*Sir Wazir Hasan*: And you wanted to convey the impression to the public that it was still a matter of doubt?

*Witness*: I would not go so far.

*Sir Wazir Hasan*: If that was not so, then so far as you are concerned you were definitely of the opinion that such a circular had been issued?

*Mr. Gandhi*: I was definitely led to believe that a circular or instructions in some other form did exist. I entertained this belief on the basis of the news that I received from Meerut.

*Sir Wazir Hasan*: So far as the news item itself is concerned it makes no reference to any circular?

*Mr. Gandhi*: That is true.

*Sir Wazir Hasan*: What was the basis for the belief that a circular or written instructions had been issued?

*Mr. Gandhi*: I believe that has been answered.

*Chief Justice*: That is a matter for argument.

*Sir Wazir Hasan*: Why did you not reach Mr. Vidyarthi himself in making these inquiries?

*Mr. Gandhi*: My name, my dress and my profession are such that I am regarded as a red rag in certain quarters and it is very unwillingly that I would approach such quarters for a personal interview.

Witness added that he was not quite sure that it would be legally appropriate for him to approach Mr. Vidyarthi.

*Fourth Hearing (Contd.)*

### BY THE COURT

*Chief Justice* : Are you now satisfied that the imputation cast on the Chief Justice by the news published in the issue of August 3 was wholly unjustified.

*Mr. Gandhi* : I was so satisfied on the very first day of the hearing of the case in this court.

*Chief Justice* : Are you now satisfied that what was attributed by the news item to his Excellency the Governor was wholly untrue?

*Mr. Gandhi* : Nothing has been said on that point, but I am prepared to accept as your lordship puts it.

*Chief Justice* : You admit that by the news item a grievous wrong has been done to his Excellency the Governor and the Chief Justice of the province?

*Mr. Gandhi* : I can only say that I regard the whole affair as most unfortunate.

*Chief Justice* : You consider your paper a responsible paper?

*Mr. Gandhi* : I do.

*Chief Justice* : And yourself a responsible editor?

*Mr. Gandhi* : Yes.

*Chief Justice* : You now appreciate that a grievous wrong was done by publishing the news item and the paragraph in the editorial comment?

*Mr. Gandhi* : I think in the circumstances it was unfortunate that it was published, but I do not see how, again in the circumstances, it could have been avoided.

*Chief Justice* : Did it ever strike you that the exalted office of the Governor and of the Chief Justice demanded extreme caution on your part?

*Mr. Gandhi* : My lord, if it had reference to anything but war effort I would have exercised 10 times the caution that I actually did in this case. My paper has no animus against your

*Fourth Hearing (Contd.)*

lordship and although it strongly criticizes his Excellency the Governor, it would have no interest in starting a canard against him. But it is the belief of my paper that many things are unfortunately taking place in this country under the stress of the war which would not otherwise happen and it was my frank belief that in view of the extraordinary circumstances of the war even his Excellency the Governor and even your lordship might conceivably be drawn into action which according to one section of opinion might be considered appropriate, but entirely inappropriate according to another section of opinion.

*Chief Justice* : Did the belief that the Governor or the Chief Justice might have resorted to a certain course of conduct, in your opinion, furnish a justification for giving publicity to the news of the description that you did publish on August 3?

*Mr. Gandhi* : The question of might would arise in that sense if I had been concocting a piece of news. But what I am trying to state is that when the news came to me in the manner it did, I shrugged my shoulders and said perhaps war had made it possible.

*Chief Justice* : Do you now realize that the mention about a circular in the headlines was wholly unjustified?

*Mr. Gandhi* : I am prepared to agree.

*Chief Justice* : Did you appreciate this fact on the first day of hearing in this court?

*Mr. Gandhi* : I did.

*Chief Justice* : Do you consider it proper then to make amends for the wrong done by you?

*Mr. Gandhi* : The question of personal amends to your lordship has been engaging the attention of myself and my distinguished counsel.

*Chief Justice* : It is not a question of making amends to the Chief Justice personally but it is a question of making amends to the exalted office of Chief Justice. Has that engaged your attention so far?

*Fourth Hearing (Contd.)*

*Mr. Gandhi* : It has.

*Chief Justice* : But the weeks that have intervened have not enabled you to arrive at a decision in the matter?

*Mr. Gandhi* : My lord, if anything short of the evidence placed before this court had come to my attention I would have made the fullest amends long ago.

*Chief Justice* : You realized from the very outset that the existence of a circular was a matter of cardinal importance in the case?

*Mr. Gandhi* : I did not take that view.

*Chief Justice* : Then why did you in the letter, dated August 9, addressed to Mr. Singhal exhibit extreme anxiety about the production of a circular, or a copy thereof?

*Mr. Gandhi* : This letter is dated August 9. As I have already stated I could not make out all the details of the charge against me until I received the writ which arrived on August 25 and I think it would be granted that at that stage it was natural on my part to proceed in the case, legally as well as morally speaking, as though a circular did exist.

*Chief Justice* : You have talked about your "public duty" in the course of your evidence. Does it occur to you that it was equally your public duty not to show disrespect to the office of Chief Justice?

*Mr. Gandhi* : Entirely.

*Chief Justice* : Do you realize it now that disrespect has been shown to that office?

*Mr. Gandhi* : I realize that I have been an unwitting instrument of showing disrespect for which I am extremely sorry.

*Chief Justice* : And the cause of the whole trouble is Mr. Singhal?

*Mr. Gandhi* : My lord, that is a point on which I will strive to establish his innocence to the end of my existence.



## AUTHOR OF COMMENT

### Editor's Refusal To Disclose Name

ALLAHABAD, Sept. 26.

Five more witnesses were examined before their lordships the Chief Justice and Mr. Justice Collister today in the *Hindustan Times'* contempt case on behalf of Mr. Devadas Gandhi and further hearing was adjourned till October 27.

### EVIDENCE OF MR. BHARADWAJA

Mr. D. D. Bharadwaja, Assistant Editor of the *Hindustan Times*, whose examination-in-chief by the Rt. Hon. Sir Tej Bahadur Sapru commenced yesterday shortly before the court rose for the day, stated that he had been connected with the *Hindustan Times* for the last three years. As Assistant Editor, he dealt with news received from mofussil correspondents and also wrote editorial articles. He remembered that the news which was the subject of inquiry before their lordships had appeared in the issue, dated August 3. That news passed through his hands and he gave the headlines. Because the word "circular" was not mentioned in the news item he put a mark of interrogation after the word. It was merely an inference. Afterwards the comment in question appeared in the issue, dated August 5. A telegram had been received on the 8th informing them that some steps had been taken by the Allahabad High Court in respect of that comment. After August 8 an inquiry was made by the *Hindustan Times* office from Mr. Singhal, their Meerut correspondent. They got a reply from Mr. Singhal. The letter of Mr. Singhal dated August 10 must have reached them on the 11th. The news of the issue of a writ of contempt by their lordships was published in the issue dated August 14. After the reply of Mr. Singhal they did not carry on any correspondence with their correspondent. They wrote to their legal correspondent in Allahabad asking him to send them copies of the Registrar's application and affidavit as early as possible.

The writ was served on the editor and the printer and publisher on August 25. The editor and witness went to Meerut

*Fifth Hearing (Contd.)*

on August 31 and arrived there at about 10 o'clock in the morning. They went to Prof. Dubey's place. He had known Prof. Dubey for about 20 years since they were contemporaries at the Agra College. Because their correspondent had told them that certain lawyers were present in the judge's court when the incident had occurred, they asked Prof. Dubey if he could take them to the lawyers, or arrange a meeting with them. Dr. Dubey went to Mr. Banerji's house and after coming from there told them that Mr. Banerji had narrated the events of July 31 to him. They subsequently met Mr. Banerji at Dr. Dubey's place where he had been invited for tea. Mr. Banerji admitted to them in the presence of Dr. Dubey that he was present in court when the incident occurred. Mr. Devadas Gandhi afterwards left for Delhi by the evening train.

Witness said that they did not meet Mr. Surajbal Swami, advocate, on that day. Witness stayed on in Meerut, after Mr. Devadas had left, for another day and a half, and left for Delhi on September 2. On the 1st he met Mr. K. N. Banerji in the afternoon and had some talk with him about the incident in court. Mr. Swami arrived when Mr. K. N. Banerji was still with them at Mr. Dubey's house. Mr. Swami complained that Mr. Vidyarthi sent for his son-in-law to his chamber, had a talk with him for about 45 minutes and obtained from him a written statement to the effect that the judge had not made the statement attributed to him. Witness saw the District Judge, Mr. Akbar Husain, on the morning of September 2 at about 8-45 at his residence in order to bring to his notice that Mr. Vidyarthi was taking statements from lawyers under pressure. Mr. Akbar Husain said that he had no knowledge of the matter and that Mr. Vidyarthi was the best person either to contradict or confirm it. During the course of further conversation Mr. Akbar Husain remarked that matters had taken a very unfortunate turn and some one was likely to get it in the neck and that it was Mr. Vidyarthi who was likely to get it in the neck. Witness said that they had no grudge against Mr. Vidyarthi and he was informed by Mr. Akbar Husain that he had advised Mr. Vidyarthi to go and meet the Chief Justice at Allahabad and make a clean breast of the whole matter to him.

*Fifth Hearing (Contd.)*

Witness again went to Meerut on September 3. He was called by Mr. Surajbal Dikshit to meet him and he went to meet him. Mr. Dikshit was anxious that there should be some compromise so that Mr. Vidyarthi might be saved. Witness told Mr. Dikshit that it was a matter between the High Court and the *Hindustan Times* and no compromise with Mr. Vidyarthi could be of any avail.

Witness went to Meerut again a few days back in order to engage Mr. Gopinath Sinha, a local advocate, as their counsel. Mr. Sinha was now present here.

According to the practice prevailing in their office it was entirely within the discretion of the editorial staff to reject a news item and not to publish it. The entire responsibility was of the editor or of the staff regarding publication. They generally did not change the substance but they improved the language of any communication received by them. Witness next explained in detail how he had edited the copy received from Mr. Singhal. During the three years that witness had been on the staff of the *Hindustan Times* he had been dealing with news items received from Mr. Singhal and he had no occasion to doubt his reliability or honesty. Before the publication of this message they had received in their office numerous complaints of judicial officers raising subscriptions for the war fund from all over India. They published a few complaints and in regard to several others they made editorial comments bringing the matter to the notice of the Government.

### CROSS-EXAMINATION

Cross-examined by Sir Syed Wazir Hasan, on behalf of Mr. Vidyarthi, witness said that he inferred that a circular was issued by the Chief Justice from the language used by the Meerut correspondent in his message to the paper.

When Mr. Singhal wrote in his message "I reliably learn", etc., witness understood that the matter must be within his personal knowledge based upon authoritative sources.

*Sir Wazir Hasan* : Did Mr. Dikshit tell you during the

*Fifth Hearing (Contd.)*

interview that there was no circular issued by the Chief Justice and that your only way of escaping the consequences was to apologise?

*Witness* : Mr. Dikshit had no discussion about the circular but only wanted that we should come to some compromise with Mr. Vidyarthi.

*Sir Wazir Hasan* : What did you understand by compromise in a case of this nature?

*Witness* : I thought that he wanted that somehow we should not mention the name of Mr. Vidyarthi because he also said that a Hindu judge would be sacrificed. These are his words.

*Sir Wazir Hasan* : Did you ask Mr. Dikshit to get the photograph of the circular and did he in reply say that there was no circular?

*Witness* : His reply was that that was not practicable.

*Sir Wazir Hasan* : From the conversation that you had with Mr. Dikshit you carried the impression that there was such a circular?

*Witness* replied in the affirmative and added that now it was not so since his lordship the Chief Justice had denied it. At the time of his interview with Mr. Dikshit he was aware of the issue of the contempt notice. The interview was on September 3. He did not ask Mr. Surajbal Swami to give him in writing what he said, because he said that he would not take any initiative but if called by the High Court he would depose.

Is it a fact that during the interview Mr. Dikshit told you that you should act in a manner so as not to make your paper suffer? He also told you that, independently of the fact what Mr. Vidyarthi said or not, your offence of contempt was complete and that you should apologise?

*Witness* : He did not say anything about the paper. He only said that a way should be found to save Mr. Vidyarthi.

Did you in answer to what he had said tell him then and there that you would not apologise and you were persons who would

*Fifth Hearing (Contd.)*

be prepared to go to jail?—No. I did not say anything of the kind. I only said that we shall place all the facts before the High Court without caring for legalities and ask them to judge us on the basis of those facts.

Can you add anything to the account of your interview with Mr. Akbar Husain?—I also enquired from Mr. Akbar Husain whether Mr. Vidyarthi was going to accept his advice to see the Chief Justice and to make a clean breast of the whole matter to his lordship. In reply to this Mr. Akbar Husain said that Mr. Vidyarthi had also written to the Registrar for an early appointment with his lordship the Chief Justice and as soon as he received a reply he would go to Allahabad and make a clean breast of the whole matter. He also said that our correspondent was somewhat indiscreet in passing all kinds of information to us. In reply I told him that it was his duty to send us all important facts which came to his knowledge and it was for us to judge what to publish and what not to publish. The words used by him about the correspondent were that he had been sending indiscreet reports. I distinctly remember the word "indiscreet."

## BY THE COURT

In reply to the Chief Justice witness said that he was present in court when Messrs. Vidyarthi and Akbar Husain had been examined.

Have you been taking an active part in instructing your counsel in this case?—I have been helping Mr. Devadas Gandhi with the information in my possession.

Did you instruct your counsel to put to Mr. Akbar Husain in cross-examination the fact that he had told you at the interview that Mr. Vidyarthi had admitted his mistake to him (Mr. Akbar Husain)?—No, I did not instruct him.

Can you assign any reason for this conspicuous omission?—We put all the salient facts before our counsel leaving it to him to put any question he liked. It may be that this fact was not described to him in detail.

Do you or do you not consider the statement of Mr. Akbar

*Fifth Hearing (Contd.)*

Husain that Mr. Vidyarthi had admitted his mistake a salient fact in this case?—I did consider that it was an important enough fact but the line adopted by Mr. Vidyarthi of admitting collection of war funds in court gave it a different interpretation.

It may be that all that Mr. Vidyarthi had admitted to Mr. Akbar Husain was his mistake in raising subscription for the war fund in the court room?—I did not specifically enquire from Mr. Akbar Husain as to what the admission of mistake amounted to. At that time my impression was that it amounted to his making a statement implicating the Chief Justice and the Governor in the collection of war funds in court.

You cannot say positively that Mr. Vidyarthi admitted to Mr. Akbar Husain that he had implicated His Excellency the Governor and the Chief Justice?—I cannot say it either way.

On how many days in all between August 10 and this day did you visit Meerut in connection with this case?—I visited Meerut three or four times.

And during your visits you were engaged in the task of marshalling evidence?—No. In the first visit we went to ascertain the correctness or otherwise of the information supplied to us by our correspondent about people who were stated to have been present in court. The second time I went because Mr. Dikshit wanted to see me. The third time we went to engage Mr. Gopinath Sinha, advocate.

Do the first paragraph in the news item of August 3 and the editorial comment in the issue of the 5th have a political flavour in them?—No. They have no political flavour. It is all factual.

Are both the first paragraph and the editorial comment completely divorced from politics?—If the raising of subscriptions to the war fund is politics, then the first paragraph and the editorial comment are associated with politics, otherwise not.

If the raising of the war fund is a branch of political activity, then the first paragraph and the editorial comment have a political flavour in them?—No. I suppose "association" and "flavour" are

*Fifth Hearing (Contd.)*

two different things. These are facts about the raising of the war fund which are mentioned there.

Asked if he now realized that it was highly improper on his part to associate the Chief Justice with the impure atmosphere of politics taking him out from the pure atmosphere of the administration of justice, witness stated that at the time he gave the news he did not consider it as improbable that some such instructions might have been issued, because the Chief Justice of the Lahore High Court had himself been going about raising the war fund and speaking on the subject of war effort. Asked if he now realized his mistake in associating the Chief Justice of Allahabad with politics, witness stated that after his lordship's denial of the issue of any kind of instructions by him to judicial officers in connection with the war fund he did think that the Chief Justice was not associating himself with controversial politics. "I do think that the Chief Justice of Allahabad does not take part in any controversial politics, but at that time the question of raising war fund was not considered by me as highly improbable because of the Chief Justice of the Punjab raising the war fund."

At this moment do you realize your mistake or not?—Yes, now we do feel that an injustice has been done to the Chief Justice by associating him with the collection of the war fund.

And even then the course that would have appealed to a gentleman did not appeal to your editorial staff, viz., the course of submitting an abject and unqualified apology?—We have been thinking of making amends to his lordship the Chief Justice, but at the same time we wanted to place before you all the facts which have come to our knowledge.

Is it appreciated by you and the other members of the staff connected with this case that it is now too late to tender an apology?—No, that is not my impression.

You stated yesterday that you put a note of interrogation after the word 'circular' as no circular was mentioned by your correspondent and it was merely your inference that a circular had been issued, Now state whether it was consistent with your

*Fifth Hearing (Contd.)*

responsibility as a journalist to make such a serious allegation against the Chief Justice on a mere surmise or inference on your part?—I did not want the public to infer that it was absolute truth that a circular had been issued and I wanted to guard myself against the public drawing any hasty conclusion and having any decided opinion about his lordship the Chief Justice in this matter.

Were the headlines in the news-item calculated to lead the reader of the paper to conclude that what was alleged against the Chief Justice may probably be true?—The public could form their own conclusion. Some people would think that there was a circular, some might think that there was not a circular.

Do you consider such a publication consistent with your responsibility as a journalist?—I do feel that if based on reliable information such a thing could be published in public interest.

Do you realize that you are sailing dangerously near the wind?—(No answer).

Are you now conscious that you have abused your position as a journalist in putting those headlines?—I do not think I have abused my position as a journalist in putting those headlines, because I believed that the Punjab Chief Justice having interested himself in war efforts this thing might not be improbable.

So you considered it consistent with journalistic propriety to attribute improper conduct to the Chief Justice of the Allahabad High Court on the analogy of information drawn from some other province?—I thought that if it was not improper for the Chief Justice of the Lahore High Court, it may not be improper also for the Chief Justice of the Allahabad High Court to take interest in war effort.

Do you mean to say that you now hold the view that it was not at all improper for the Chief Justice of the Allahabad High Court to interest himself in the raising of war fund?—Our paper had criticized the Chief Justice of the Lahore High Court for taking interest in raising war funds and we do consider it improper for a Chief Justice to take interest in this kind of effort.



*Fifth Hearing (Contd.)*

Did it occur to you before putting these headlines that you should verify that a circular had been issued by the Chief Justice?—Work in a newspaper office has to be done under great pressure and we have to carry on a race with time and sometimes we cannot realize all the implications and interpretations that may be put on a thing.

In other words, that pressure and race justify recklessness on the part of the editorial staff?—No, it is no justification for recklessness but we depend upon our experience and intuition to decide whether a thing is proper to be published or not.

Does that experience and intuition justify the indiscriminate throwing of mud?—No, we did not regard it as any throwing of mud.

Sir Wazir Hasan requested the court to ascertain from witness as to who was responsible for the paragraph under Current Comments in respect of which the present proceedings were taken, and Mr. Bharadwaja, replying to the question put by the Chief Justice, said that it was a matter which should be put to Mr. Devadas Gandhi, the Editor.

Sir Tej Bahadur Sapru said that no responsible editor would disclose the name of the author of a comment and would rather go to jail. He added that it was not a question which could be put to a member of the staff.

The Chief Justice said there was no occasion for heat and he merely wanted to enquire of Sir Tej Bahadur Sapru whether his client was prepared to disclose who the author of the paragraph was.

Sir Tej Bahadur Sapru said that it was a question which should be put to Mr. Devadas Gandhi, the editor of the *Hindustan Times*, with whom he had not had any consultation about this matter.

The Chief Justice then recalled Mr. Devadas Gandhi to the witness-box and asked him whether he had any objection to disclosing the name of the author, as the counsel for Mr. Vidyarthi desired to know the name,

*Fifth Hearing (Contd.)*

*Mr. Devadas Gandhi* : I would like to answer the question at some length with your lordship's permission.

*Chief Justice* : Can you not tell us whether you have any objection or not to disclosing the name?

*Mr. Devadas Gandhi* : I can only answer it in a few sentences.

*Chief Justice* : Very well.

*Mr. Devadas Gandhi* : I was privileged to be present here during your lordship's cross-examination of Mr. Bharadwaja. My attitude in this case has been one of placing every card on the table. But if I may be permitted to say so, certain words fell from your lordship a few minutes ago which struck me as constituting a threat of action against other members of my staff in addition to myself and Mr. Singhal. Under the circumstances I desire to state that, unless compelled under the law, I shall not disclose any further names of members of my staff, and I desire further to declare that I invite on my head the cumulative punishment that this court may wish to inflict on members of my staff.

### PROF. DUBEY'S EVIDENCE

Examined by the Rt. Hon. Sir Tej Bahadur Sapru, Dr. D. L. Dubey said that he had been a professor in the Meerut College for over 18 years and he took his Ph.D. from the London University during this period. He knew Mr. Bharadwaja for over 20 years. He came to know Mr. Devadas Gandhi after August 31 and not before. He was neither a Congressman nor a socialist but a student of politics and he had written a number of articles criticizing the Congress Ministry in the U.P. On August 31 Mr. Bharadwaja and Mr. Gandhi saw him at Meerut. They gave him the impression that they had come to Meerut on a fact-finding mission in connection with the case against the *Hindustan Times*. The first question which they put to him was with regard to Mr. R. L. Singhal who was the Meerut correspondent of the *Hindustan Times*. They asked him about Mr. Singhal's position and reputation. He replied that Mr. Singhal was quite an independent man and at least on one occasion he had shown himself

*Fifth Hearing (Contd.)*

above temptation. Mr. Gandhi gave him the impression that he wanted to ascertain from some eye-witnesses whether what Mr. Singhal had written was or was not true. They mentioned to him the names of Messrs. Banerji, Surajbal Swami and Hanifi. He knew Messrs. Banerji and Swami but he was not intimate with them. He saw Mr. Banerji and he had a talk with him about the incident under enquiry. He told witness that he was present that day in the court-room and Mr. Vidyarthi uttered the words ascribed to him and money was collected for the war fund which was placed on his table. Witness then asked him to come to his house because he wanted that Mr. Banerji himself should give first-hand information to Messrs. Gandhi and Bharadwaja. Mr. Banerji accordingly came to his house in the afternoon. Then there was conversation among Messrs. Gandhi, Bharadwaja, Banerji and witness.

Witness stated that Mr. Gandhi asked Mr. Banerji whether he would be prepared to give an affidavit on the lines of the statement made by him. Mr. Banerji said that he would not like to volunteer himself but he was prepared to come to the High Court if necessity arose and if he was called. He said that he would state at the High Court what he had stated at that time. After Mr. Devadas Gandhi left for Delhi in the evening Mr. Bharadwaja stayed on with him. Witness met Mr. Surajbal Swami next day. Mr. Bharadwaja was not with him. He met Mr. Swami in his chamber at 3 p.m. on September 1. He did not exactly remember what talk he had with Mr. Swami, except that he told him that Mr. Gandhi and Mr. Bharadwaja wanted to see him the previous day. Mr. Bharadwaja visited witness on several occasions. A respectable lawyer sent for witness and told him that he wanted to have a conversation with Mr. Gandhi or Mr. Bharadwaja about the controversial affair and see if any way could be found to save Mr. Vidyarthi. Mr. Bharadwaja arrived at about 3 p.m. on September 3 and witness then sent a message to the lawyer about the arrival of Mr. Bharadwaja. Witness went to the lawyer's residence along with Mr. Bharadwaja. At that time two of his colleagues also happened to be present there. The lawyer said, "Can you somehow or other save Mr. Vidyarthi? He

*Fifth Hearing (Contd.)*

*Mr. Devadas Gandhi* : I would like to answer the question at some length with your lordship's permission.

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*Fifth Hearing (Contd.)*

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*Fifth Hearing (Contd.)*

is a man with family and children." Mr. Bharadwaja said it was a matter between the *Hindustan Times* and the High Court and they had no grudge against Mr. Vidyarthi.

Did that respectable lawyer tell Mr. Bharadwaja to go to the High Court and tender an apology for what the *Hindustan Times* had published?—He did not suggest to Mr. Bharadwaja that the *Hindustan Times* should apologize.

Witness stated that the respectable lawyer was Rai Bahadur Surajbal Dikshit, who was a leading criminal lawyer at Meerut and a man of considerable influence both in the bar and the judiciary. There was some argument and ultimately Mr. Dikshit came round to the view that Mr. Vidyarthi should see the Chief Justice. Two of his colleagues in the college, Prof. Madan Mohan and Professor Khare, were also present on the occasion. Some other persons were also there. After that they left Mr. Dikshit's place. On September 10 witness met Mr. Gandhi at Delhi where he had gone to give a radio talk. After that Mr. Gandhi and Mr. Bharadwaja came to Meerut five days ago and they told him that they had come to engage Mr. Sinha. Mr. Surajbal Swami came to his house on September 1 and told him that Mr. Vidyarthi was taking statements from lawyers. Mr. Bharadwaja was present there. Mr. Swami said that Mr. Vidyarthi had taken a statement from his son-in-law and that he was very indignant with his son-in-law.

Did Mr. Swami tell you that he had heard the judge making the statement in court which was attributed to him?—I think he did. He always said that he would speak the truth whatever happened.

### CROSS-EXAMINATION

Sir Wazir Hasan then cross-examined witness on behalf of Mr. Vidyarthi.

May I take it that you played the role of an agent to Mr. Gandhi and Mr. Bharadwaja for the purpose of collecting evidence for them?—It is a wholly unwarranted assumption.

What interest had you in helping them by going to Mr.

*Fifth Hearing (Contd.)*

Banerji and Mr. Swami?—Mr. Gandhi wanted to ascertain the truth from eye-witnesses and as he had come to me it was my duty to help him. Whatever I have stated about the conversation at the interview with Mr. Dikshit is all that I remember.

Did you or Mr. Bharadwaja ask for a photographic copy of the alleged circular?—We said that if we could have a photographic copy of the circular that would absolve Mr. Vidyarthi of all responsibility. At the interview Mr. Dikshit said positively that there was no such circular and therefore no photographic copy could be had.

Did Mr. Dikshit tell Mr. Bharadwaja that the only way to get out of the contempt case was to tender apology to the High Court?—I do not think that he advised him in that way.

In what way did he advise him?—I do not remember the exact conversation, but I have already given the gist of it. Mr. Bharadwaja had suggested to Mr. Dikshit that it was for Mr. Dikshit to find some way out of the difficulty.

Did Mr. Bharadwaja tell Mr. Dikshit that he would not accept Mr. Dikshit's advice and that he was not afraid of going to jail?—Mr. Bharadwaja said: "Well we are not afraid of the consequences, we should be able to establish the position of the *Hindustan Times*." Probably Mr. Dikshit had held out a suggestion that it would be difficult for him to bring lawyers to depose in his support and he should seek some way out of the difficulty.

## BY THE COURT

Answering questions put by the Chief Justice, witness said that he and Mr. Bharadwaja were friends but not intimate friends. Mr. Singhal always sent faithful reports to the Press. He had seen certain reports of his concerning the Meerut College affairs and he found that they were a faithful picture of what had happened.

Did you enquire from Mr. Bharadwaja or Mr. Gandhi as to what was the necessity of taking a counsel from Meerut when eminent counsel were appearing for them in the High Court?—

*Fifth Hearing (Contd.)*

The feeling at Meerut was that the cross-examination of Mr. Vidyarthi had not taken place in as satisfactory a manner as it should have been done; otherwise the whole truth would have been out in the High Court that day. It was specially due to the fact that no lawyer with the background of the incident was present at the High Court at the cross-examination.

Witness said that he did not exactly interest himself in this matter from August 31 and he simply wanted to give facilities to Messrs. Gandhi and Bharadwaja to meet the eye-witnesses. Witness said that Mr. Banerji began wavering from September 1 after he had seen some people. He had seen Mr. Akbar Husain and Mr. Dikshit.

Do you mean to suggest that Mr. Akbar Husain was trying to win over witnesses in the interest of Mr. Vidyarthi?—That is for you to judge.

Is it your suggestion that Mr. Dikshit was trying to suborn evidence with a view to help Mr. Vidyarthi?—That is for you to judge. I do not want to make any insinuation about any individual.

Can you suggest any substantial reason for Mr. Banerji beginning to waver within 24 hours of the conversation that he had with you?—Probably it must have been brought home to him that the matter was more serious than he had taken it to be.

Is it true to say that from and after August 31 there was a tug-of-war for the preparation and concoction of evidence?—There was only one party to the tug-of-war and that was Mr. Vidyarthi's party that had begun taking statements from lawyers.

But Mr. Gandhi also wanted to get an affidavit in writing from Mr. Banerji?—Mr. Gandhi had simply made a request to Mr. Banerji if he could give in writing a statement of what had actually happened.

Sir Tej Bahadur Sapru, in re-examination, asked: From your experience of Mr. Singhal as a reporter of the *Hindustan Times* did you have any occasion to feel or to know that any report sent



*Fifth Hearing (Contd.)*

by him from Meerut with regard to Meerut affairs was lacking in truth or in precision?

*Witness* : None.

## MR. ATTAR SINGH

Examined by Sir Tej Bahadur Sapru, Mr. Attar Singh, the next witness, said that he remembered the Dhikoli case which was tried by Mr. Vidyarthi. He was a *pairokar* in that case on behalf of the prosecution. The judgment was pronounced on July 31. He was present in the court-room at the time when the judge pronounced his order. The judge sentenced four accused to transportation for life and six months' rigorous imprisonment and he did not pronounce any orders at that time as regards the remaining 16 accused. After one or two minutes the four persons against whom complaints had been filed were asked to come forward. When these four came before him the judge asked them to give subscriptions for the war fund. One of them kept quiet for some time and then he said, "We have been sufficiently looted." He also added that he had nothing left with him. The accused meant that he had incurred heavy expenses in defending himself. The judge then said that he had the order of the Governor and the Chief Justice and therefore they would have to contribute to the war fund. There were some consultations between the *pairokars* and their vakils and then some subscription was raised. A sum of Rs. 200 was collected on the spot from the four accused. Mr. K. N. Banerji counted the notes. Thereafter Mr. Surajbal Swami said that a sum of Rs. 150 had been contributed by his clients and he would deposit the sum the next day. Thereafter the judge said that the remaining 16 accused were acquitted. There was an interval of 15 minutes in between the order convicting the four accused and the order acquitting the 16 accused.

Cross-examined on behalf of Mr. Vidyarthi by Mr. Raj Bahadur Jami, witness stated that he was a clerk of a vakil named Lala Chhattarpal. He knew both Mr. Singhal and Mr. Gauri Shankar and from July 31 till this date he had had no conversation with either of them. He saw them only yesterday. He had had

*Fifth Hearing (Contd.)*

no talks about matters deposed to by him with anybody. He saw Mr. Banerji at the time he had counted the notes in the court of Mr. Vidyarthi. He did not know whether Mr. Banerji was present when the judge pronounced the order convicting some of the accused. No counsel for the prosecution was present on the occasion.

Replying to questions put by the Chief Justice, witness said that his master was not appearing for either side in the case. The two men who were murdered were related to him and therefore he acted as one of the *païroḱars* for the prosecution. He was not at all sorry because of the acquittal of the 16 persons. He and the other *païroḱars* were neither pleased nor displeased. The judge did not ask the *païroḱars* for the prosecution to contribute to the war fund, nor did he recollect whether the judge asked for subscriptions from the 12 accused who were being prosecuted by the police and whom the judge had acquitted. In his presence the judge asked for subscription only from the four accused who had been prosecuted on complaint.

### MR. SURAJBAL SWAMI'S EVIDENCE

Examined by Sir Tej Bahadur Sapru, Mr. Surajbal Swami, pleader, Meerut, the next witness, said :—

I have been practising in Meerut for about the last 13 years. I practise specially in the criminal courts. I frequently appear in sessions cases. I very vividly remember the Dhakoli case. I appeared as defence counsel for three of the accused in that case. Those accused were acquitted. The judgment was delivered on the 31st of July, 1941. The judgment was delivered between 3 and 4 p.m. He delivered first the judgment with regard to the four accused persons who were sentenced to transportation for life. He did not deliver the judgment as regards the rest of the accused when I was there, but the lawyers present there knew that they stood acquitted.

Money for war fund was collected that day in the court-room. Rs. 200 were collected in notes and a promise for Rs. 200 was made on behalf of probably two persons who were represented by an advocate from Bijnor.

*Fifth Hearing (Contd.)*

**Question :** Did you make any offer on behalf of your clients?

**Witness :** It was no question of an offer. I discussed the matter with the judge and another lawyer present there. The discussion was that the lawyer told me that my three clients had to give Rs. 300 i.e. Rs. 100 each and I said that we were not engaged to have them hanged. Thereafter he said that the judge also wanted it and I said : "The judge may want a thousand rupees, but you are their counsel." I said so because he was appearing in the case with me. Thereafter I said that as Rs. 200 had been paid by four accused persons, my clients should pay at the rate of Rs. 50 each, i.e. Rs. 150. Then I said that I was ready to pay Rs. 150, but I had no money ready with me at that time. The question of raising money in court rose at the instance of the judge.

**Question :** Will you kindly relate to their lordships the language or the substance of the language which the judge used in making an appeal for the raising of the fund?

*The Chief Justice (note for the court record).*

At this stage when the witness was not prompt in answering the question, Sir Tej Bahadur Sapru suggested to the witness that he might answer the question in Urdu if he so desired. The witness then stated : "No. It is a question of recollection because I have not talked over the matter to many persons."

**Witness :** The judge said addressing to Mr. S. C. Gupta so far as I remember—I cannot vouchsafe the guarantee of my statement in this connection being *verbatim* true, but the substance of the words was :

*"Ham kya karen His Excellency the Governor Saheb Chief Justice Saheb se mile the. Unhon ne ham se kaha aur ham ko aisa karna hota hai,"* or some such things.

**Question :** Are you quite positive that you heard the judge refer to his Excellency the Governor and to his lordship the Chief Justice?

**Witness :** Certainly. I am very positive and it is true. I was asked on numerous occasions to see the judge personally, but I

*Fifth Hearing (Contd.)*

persistently refused to see him. I eventually saw the judge in his chamber on the 10th of September when one of my criminal appeals was on.

*Question :* Will you tell us what passed between you and the judge in the chamber?

*Witness :* The substance of it was that the judge suggested that either I should take his resignation or I should not give evidence against him to the effect that he had mentioned the Governor or the Chief Justice in connection with the raising of subscription and then he showed me a copy of the affidavit that was probably sent to him that morning.

That was the affidavit of Mr. Gandhi. That was on the 10th of September and the judge was to proceed that day to Allahabad in pursuance of the orders of the High Court. I saw that affidavit. He showed the affidavit to me. He asked me to suggest answers to some of the paragraphs in the affidavit. He never read the paragraphs over to me nor did I read the paragraphs. He handed over the affidavit to me and he said he was unhinged. I told him, "Sir, I am not going to tell a lie and I cannot tolerate your face any longer and probably you may also be wishing the same." Thereafter I left his chamber abruptly. I came to know that the judge had called my son-in-law Krishna Swarup. Exactly he was not called. I sent him because the judge repeatedly sent his men, his peons, to me, asking me to see him. I asked my son-in-law Krishna Swarup to go and find out what the judge wanted to say to me. This happened on the 1st of September. Then my son-in-law did go to the judge and remained with him in his chamber for 45 minutes. I then sent Mr. D. P. Mittal, a junior advocate, to find out what was happening to my son-in-law. He reported to me that Mr. Krishna Swarup was in the judge's chamber. Thereafter Krishna Swarup came and told me that the judge pressed him and had obtained a writing from him. I lost my temper and I left the place at once for my home. I did not rebuke my son-in-law then. I discovered only three or four days ago what my son-in-law had written. He had written something like that he was present on the date of the delivery of judgment

*Fifth Hearing (Contd.)*

and the judge did not use the name of "His Excellency" and "My Lord the Chief Justice" in raising subscriptions. But my son-in-law on his return had reported to my clerk what had happened. I gathered the contents from my son-in-law only four days ago. The fact is that after the day that he had an interview with the judge on the 1st of September, he left practice at Meerut and went away to practise at Bijnor.

*Question :* Why did your son-in-law leave Meerut and go and settle at Bijnor?

*Witness :* My son-in-law knew my habit that for the last two years I have not told a conscious lie and because I had turned out my son who used to tell any amount of lies ; therefore, my son-in-law left Meerut.

*Question :* Anyhow, this incident has led to very unpleasant consequences in your family?

*Witness :* Yes, it has. He had dragged my daughter also away from me and went with bag and baggage from Meerut to Bijnor.

In reply to further questions witness said : For the first time I met Devadas Gandhi about half an hour ago. I did not talk to him. I know Mr. Dubey by face. I do not remember any occasion on which I may have met Mr. K. N. Banerji at the residence of Mr. Dubey. There was a conversation between me and Prof. Dubey about this incident. It was on the 1st of September between 12 noon and 1 p.m. Prof. Dubey met me in my chamber in Court. He told me that one Mr. Bharadwaja and Mr. Devadas Gandhi had come on the 31st of August to meet me, but as I was away, they could not meet me and either I should go to see Mr. Gandhi or he should bring Mr. Gandhi to me. I answered that I did not want to pick up Mr. Gandhi's acquaintance.

*Question :* Have you any objection to the name "Gandhi?"

*Witness :* No.

*Question :* Then what was passing in your mind when you told him that you did not want to meet Mr. Gandhi?

*Fifth Hearing (Contd.)*

*Witness* : I thought I did not know what statement they would like me to make and, therefore, I said I did not want to meet Mr. Gandhi and besides, I do not go to see anybody in Meerut, nor do I invite anybody at my place without business. My interests are confined to my professional work and to a study of all the religions of the world.

*Question* : And, therefore, you do not mix in society?

*Witness* : No.

I have had no conversation with Mr. Gandhi upto this moment concerning this incident. But Mr. Bharadwaja and Mr. Dubey appear to me to be old chums, because I saw a photograph when I went to Mr. Dubey's place once, in which Dubey and Bharadwaja were photographed together and he said to me that he was Mr. Bharadwaja and they were students at Agra. On various occasions Mr. Bharadwaja and Mr. Dubey met me and wanted to make certain statements.

*Question* : Then should I take it that your position was that you would not like to commit yourself to anyone but would, if necessary, come to court and make your statement to their lordships according to your conscience.

*Witness* : No, Sir, this is also not correct. I did not want to give evidence in this case.

*Question* : Will you please tell us why you did not want to give evidence?

(*Witness* : Is it cross-examination?)

*Court* : Answer the question.

*Witness* : In Meerut there have come to be two distinct parties because of this unfortunate incident. One is composed of Dubey, Bharadwaja and certain leading Congressmen, one of them being a premier zamindar of U.P. and the other party is of the judge.

*Question* : Who are the members of the other party?

*Witness* : Certainly, I know that the judge had the support

*Fifth Hearing (Contd.)*

of President of our Bar Association, Rai Bahadur Pandit Surajlal Dixit, Rai Shahib Moti Lal, S. C. Gupta, Barrister, and several other persons, and that was the reason that I did not like to drag myself into the mud.

*Question* : Did you ever go to Mr. Akbar Husain to complain that the judge had taken a written statement from your son-in-law?

*Witness* : No.

## CROSS-EXAMINATION

Sir Syed Wazir Hasan then cross-examined the witness.

*Question* : You said that within the last two years you have not uttered a conscious lie. Are we to infer that you did utter conscious lies previous to that?

*Witness* : Certainly not, never. By the words "conscious lie" I mean that which is palpable lie to me.

*Question* : Did you offer protest at the time when the subscription was being raised?

*Witness* : Why should I? It is not a lawyer's duty. I did not consider it an improper act on the part of the judge because the name of his lordship the Chief Justice was there.

*Question* : You did not consider it improper because the name of the Lord Chief Justice was associated with that?

*Witness* : Because the statement was made in the name of his lordship the Chief Justice by a man who occupied a very important chair in the district. I thought, as other lawyers began to think, then, that some how or other this thing may have happened.

*Question* : If it had not been associated with the name of the Chief Justice, it would have been an improper act?

*Witness* : I do not know anything about it.

In reply to further cross-examination witness said: The contents of the writing that the judge had taken from my son-in-law were communicated to me by my clerk on the 1st of September. I believed my clerk's statement, because writings had been obtained from other persons,

*Fifth Hearing (Contd.)*

*Question :* You expressed no indignation to your son-in-law?

*Witness :* The indignation was apparent from my eyes. I had not spoken a word to him.

*Question :* Did you ever by words or in some other direct way express your indignation to your son-in-law? .

*Witness :* I never expressed my indignation in words.

*Question :* Is it right to suggest that he left Meerut because of your anger with him over what he had done?

*Witness :* Yes, because he had reasons to infer that I hate a man who lies—as I submitted, I turned out my son—and I must feel angry over his act. Three or four days ago, he told me the contents of his writing and he did not tell me this before, in details.

*Question :* Your statement is that you never repeated what had happened in court that day either to Mr. Dubey or to Mr. Bharadwaja or to Mr. Gandhi?

*Witness :* I never repeated to Mr. Dube or to Mr. Gandhi or to Mr. Bharadwaja what had happened in court on the 31st of August except on the morning of the 12th September when all three of us (Dubey, Bharadwaja and myself) went to see Mr. K. N. Banerji.

## BY COURT

*The Chief Justice :* May I take it that the decision of the judge as regards all the twenty accused was known to the lawyers at one and the same time, i.e. that four accused had been convicted and the rest acquitted?

*Witness :* My Lord, this is the position. The lawyers present knew it.

*The Chief Justice :* Then the accusation against the judge that he delivered judgment piecemeal is untrue?

*Witness :* Certainly. I may add that we knew that this is the state of affairs. But if by the word "delivered" it is under-



*Fifth Hearing (Contd.)*

stood that some portion of it was read loudly to the accused and some portion was not, then it is not correct.

*The Chief Justice* : Will you kindly elucidate the statement that you made about the delivery of judgment in the first paragraph of your examination-in-chief which has just been read over to you?

*Witness* : My lord, the position is that some of the lawyers may have been present before me when the warrants for the commitment of the accused, who were convicted, to jail were being written and it may have been then that they somehow or other inferred and also knew that my clients also stood acquitted.

*The Chief Justice* : How did you know that your clients stood acquitted?

*Witness* : The entire court was chockfull and for some time I stood in the gallery. Then Harish Chandra probably informed me that papers were being written to send some of the accused to jail and we did not know what will happen to our men, and he asked me to go in and find out. I told him that Mr. Gupta was there, but then he insisted on my going and I went there and from the talk which had been going on previously between the judge and some of the lawyers present before the judgment was pronounced, I gathered that the rest of the accused were to be acquitted.

*The Chief Justice* : So it is a fact that all at once it was known to everybody concerned that four of the accused had been convicted and the rest acquitted?

*Witness* : Yes, even to the persons acquitted and convicted.

In reply to further questions witness said : I lead a very secluded life and I am not on visiting terms with anyone in Meerut. The relations between my son and me are strained and so are the relations between me and my son-in-law now.

*The Chief Justice* : Do the people harbour the feeling that you have got an uncontrollable temper?

*Witness* : Yes, some of them. I myself am conscious of this fact.

*Fifth Hearing (Contd.)*

*The Chief Justice* : What is the nature of the relations between you and Mr. Surajbal Dixit?

*Witness* : He is a distant relation of mine. He is a thorough gentleman. He loves me very much and is a man of very high position, such as Sir Tej Bahadur Sapru's.

*MR. KRISHNA SWARUP'S EVIDENCE*

Examined by Sir Tej Bahadur Sapru, Mr. Krishna Swarup said that he was the son-in-law of Mr. Surajbal Swami. He had been practising as a vakil for about eight or nine months. He had now left Meerut and he proposed to set up practice at Bijnor. On September 1 Mr. Surajbal Swami asked witness to meet Mr. Hari Shankar Vidyarthi to enquire why he was calling him. He then went to Mr. Vidyarthi and Mr. Vidyarthi gave him four or five statements and he asked witness to write down one of those statements, viz., that of Mr. S. C. Gupta and to copy it and sign his name. Witness told the judge that he did not want to make any incorrect statement that he was present in court at the time of the delivery of the judgment. He pressed him again and again to write the same statement. The judge told witness that if he gave such a statement it would help him very much if there was an inquiry. The judge told him that Mr. Gupta who was appearing for the same clients as Mr. Surajbal Swami had written the statement and there would be no harm if he made a similar statement in writing. Witness resisted again and again for about 30 to 40 minutes and then he submitted to the judge's request.

After he left the judge's chamber witness went to his father-in-law and told him of what he had done. Mr. Surajbal Swami was then very angry with him. When he found his father-in-law displeased he went back to the judge's chamber and demanded that his statement should be returned. The judge said that he would speak to Mr. Swami and did not return his statement to him. Two days afterwards he decided to leave Meerut for Bijnor. Next day again he went to Mr. Vidyarthi and asked him to return his statement. He, however, did not return the same to the witness.

*Sir Tej Bahadur Sapru* : Why did you leave Meerut—because

*Fifth Hearing (Contd.)*

you were afraid of the judge, or because you thought you incurred the displeasure of your father-in-law?

*Witness* : Because my father-in-law got angry.

Sir Wazir Hasan, in cross-examination, asked witness if he could give them the substance of the writing which he had given to the judge. Witness stated that it was to the effect that he was present in court at the time of the delivery of the judgment in the Dhakoli case and the judge did not use the words that he had received instructions from the Chief Justice and that the money was collected for the benefit of the wounded soldiers, which was the best form of charity. On a separate slip also the judge made him write that his father-in-law was not present at the time of the delivery of the judgment.

The statement signed by you was incorrect?—As a matter of fact, I was not present at the time that the incident happened.

The court then rose for the day.

## NOTICE TO SINGHAL DEFECTIVE

### Court Passes Order To Cure Defect

ALLAHABAD, Oct. 27.

Their lordships the Chief Justice and Mr. Justice Collister resumed the hearing of the *Hindustan Times* Contempt Case.

'At the outset, the Court pointed out that the notice for contempt of court which had been issued against Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*, was defective. It should have been made clear in the notice that it related to the news item which had appeared in the *Hindustan Times* of August 3. Sir Tej Bahadur said that he had no objection to this defect being cured by suitably amending the notice which was issued against Mr. Singhal.

The following order was passed by the court :—

"Sir Tej Bahadur Sapru says that he fully understands that the notice for contempt of court of which he has accepted service in respect of Mr. R. L. Singhal applies to the news item which he sent in his letter of August 1 and which was published in the issue of the *Hindustan Times* dated August 3, 1941."

Two witnesses were examined, Mr. K. N. Banerji, advocate, of Meerut, and Rai Bahadur Pandit Surajbal Dikshit, President of the Meerut Bar Association. The latter was examined on behalf of the Additional Sessions Judge, Mr. Hari Shankar Vidyarthi, and the former on behalf of Mr. Devadas Gandhi and others.

A telegram was received from one Mr. Brahmajit Singh, by the court, to the effect that he was unable to attend the court owing to the serious illness of his wife. The Chief Justice inquired which side had summoned him and Sir Wazir Hasan, on behalf of Mr. Vidyarthi, stated that he proposed to drop him.

An application was made to the court by Mr. D. D. Bharadwaja, Assistant Editor of the *Hindustan Times*, for some omissions being made good in the official transcript of his evidence at the last hearing. He said that a question put to him by Sir Wazir Hasan and his reply thereto as well as the remarks

*Sixth Hearing (Contd.)*

made by Sir Tej Bahadur Sapru (which were reported in the *Leader*) had not been included in the official transcript of his evidence and that he had signed the court's record of his evidence subject to a separate note on the omissions. The Chief Justice said that if witness had wanted to make any statements during his examination it was open to him to do so and the remarks of counsel were not part of evidence and they could not take note of what the *Leader* or any other newspaper had reported. The application was ordered to be filed.

## MR. VIDYARTHI'S REQUEST

Sir Wazir Hasan said that Mr. Dikshit appeared in this case as counsel on behalf of Mr. Vidyarthi and he proposed to examine Mr. Dikshit as a witness. Sir Wazir Hasan requested their lordships to permit Mr. Dikshit to retire from the position of counsel. Mr. Dikshit had brought a message from Mr. Vidyarthi to Sir Tej Bahadur Sapru asking whether it would be convenient for him to examine him on commission because of a certain calamity in his family. He had lost a son on October 10 or 11.

Their lordships permitted Mr. Dikshit to retire as counsel and to be examined as a witness on behalf of Mr. Vidyarthi. It was agreed that Mr. Vidyarthi should be telegraphically informed to be present in court tomorrow for cross-examination by Sir Tej Bahadur Sapru.

*Sir Wazir Hasan* : Shall I go on with my witnesses before he is cross-examined?

*Chief Justice* : We cannot break this bench now and this case must finish. For the time being we consider that sufficient time has been devoted to this case and we shall go on sitting till this case is over.

## MR. K. N. BANERJI'S EVIDENCE

Examined by Sir Tej Bahadur Sapru, Mr. K. N. Banerji said that he was practising in Meerut and that his practice was mostly in criminal courts. He fully remembered the case known as the Dhikoli murder case though he had nothing to do with it.

*Siath Hearing (Contd.)*

He was not a counsel of either party in the case. He was present in the court-room of Mr. Vidyarthi on July 31, the date on which the judgment in the Dhikoli murder case was pronounced. He was, however, not present at the time of the delivery of the judgment. He was to appear in a criminal appeal that was fixed for hearing before Mr. Vidyarthi that day, but that appeal was not heard that day. He went into the court-room at the fag end of the day to inquire whether his case would be taken up.

*Mr. Justice Collister* : What do you mean by 'fag end of the day'?

*Witness* : I mean by the fag end of the day that I went into the court-room of Mr. Vidyarthi after 4 p.m.

In reply to questions put by Sir Tej Bahadur Sapru, witness stated that when he went into the court-room he found money being collected from certain people. The persons from whom money was collected appeared to be the accused who had perhaps been acquitted. The money was being collected for war purposes. Witness was told that the judge had asked for the collection of money. Money was collected, counted and placed on the table of the judge. It was counted by witness. He had no talk about this matter personally with the District Magistrate, Mr. Bonarjee, nor did he send any message to him. Thereafter he met Mr. Devadas Gandhi and Mr. Bharadwaja at Prof. Dubey's house on August 31, so far as he remembered. Sitting at tea together they had long talks about this matter and other matters. The talk related to the collection of money in the Judge's Court and other things. He again met Mr. Bharadwaja at Prof. Dubey's place the next day, but they did not then talk about this incident. Witness, after seeing Mr. Gandhi off at quarter-past six, met Mr. Akbar Husain, District Judge, on August 31. He met the judge at a tea party arranged that afternoon in honour of Mr. Marsh-Smith, Inspector-General of A.-R.P. and Civic Guards. He spoke to Mr. Akbar Husain about this incident. He also told Mr. Akbar Husain about Mr. Gandhi's visit to Meerut and that Mr. Gandhi wanted an affidavit from him. He did not seek the advice of Mr. Akbar Husain in the matter. He narrated

*Sixth Hearing (Contd.)*

the facts to Mr. Akbar Husain in pursuance of the advice given to him by Pandit Surajbal Dikshit, who was the President of the Meerut Bar Association.

*Sir Tej Bahadur Sapru* : Did you in any way complain against Mr. Devadas Gandhi and Mr. Bharadwaja.

*Witness* : I did not complain against them.

### CROSS-EXAMINATION

Cross-examined by Sir Wazir Hasan, witness deposed that Dr. Dubey had just invited him for tea at his place and had not mentioned the object of the invitation. He did not discover the object of his being called to tea even when he was at the tea party. The topic was mentioned just as so many other incidents and he never believed that it was the main purpose of the invitation to tea.

*Question* : Are you quite definite that the judgment as a whole had been pronounced in your absence?

*Answer* : I cannot say anything about the judgment as I was not present in court.

*Question* : Can you tell us the nature of the affidavit which was required of you?

*Answer* : I was not asked to give an affidavit about any particular matter. After the party was over Mr. Gandhi asked if I could give an affidavit about the incident in court in regard to the collection of money. He did not say specifically what he wanted the affidavit to contain.

When witness met Mr. Akbar Husain at the tea party he told the judge about the realization of money in Mr. Vidyarthi's court and also that Mr. Devadas Gandhi had come and made inquiries from him concerning the incident. Mr. Akbar Husain called him next day into his chamber in the presence of Mr. Vidyarthi when witness was in court and witness told him what he had seen in court himself.

*Question* : Since that interview between you and Mr. Gandhi and Mr. Bharadwaja, had you any other interview?

*Sixth Hearing (Contd.)*

*Answer:* I think Mr. Bharadwaja came to me on or about September 12. I did not meet Mr. Gandhi after August 31. Mr. Bharadwaja came to my house that day. He just wanted to tell me that I would be summoned as a witness.

*Question:* You had no talk in this behalf with Mr. Vidyarthi?

*Answer:* No.

*Question:* Or about your interviews with Mr. Gandhi and Mr. Bharadwaja?

*Answer:* Whatever talk I had with Mr. Vidyarthi was in the presence of Mr. Akbar Husain, and I never met him alone.

#### BY THE COURT

*Chief Justice:* Did you hear Mr. Vidyarthi mentioning the Governor and the Chief Justice on July 31?

*Witness:* No, I did not.

*Chief Justice:* Did it come to your knowledge on July 31 that a reference to the Governor and the Chief Justice had been made by Mr. Vidyarthi?

*Witness:* Yes.

*Chief Justice:* Who told you?

*Witness:* I don't remember the person who told me, but I learnt it in the court-room when I went there.

*Chief Justice:* Do you know Mr. Surajbal Swami?

*Witness:* Yes, I know.

*Chief Justice:* Is he a respectable pleader?

*Witness:* Yes.

*Chief Justice:* Has he any reason to depose falsely against Mr. Vidyarthi?

*Witness:* Absolutely none.

Asked to give a gist of the conversation that witness had with Mr. Gandhi and Mr. Bharadwaja at the tea party in Mr. Dubey's



*Sixth Hearing (Contd.)*

house, witness said that Mr. Gandhi asked him if he considered Mr. Singhal to be a respectable correspondent and he replied in the affirmative. He then asked witness if the reported incident was correct and he said yes. After that he asked witness whether the money was collected in his presence and he said yes. Afterwards they talked about so many other things not concerned with this case.

*Chief Justice* : Did either Mr. Gandhi or Mr. Bharadwaja inquire from you whether Mr. Vidyarthi had made a reference to the Governor or the Chief Justice on July 31?

*Witness* : That question was never pointedly put to me.

*Mr. Justice Collister* : What do you mean by 'pointedly'?

*Witness* : I mean that question in that form was never put to me by either of them.

*Chief Justice* : Was that question put to you in any other form?

*Witness* : What they wanted to know was whether this was the talk there. They asked me whether there was a talk about the circular from the Chief Justice and I said yes.

*Chief Justice* : Were you told on July 31 that Mr. Vidyarthi had stated in court that there was a circular from the Chief Justice?

*Witness* : Yes.

*Chief Justice* : Who told you?

*Witness* : I don't remember the gentleman who told me about this.

*Chief Justice* : Are you aware that even Mr. Singhal does not say that Mr. Vidyarthi made a mention of any circular issued by the Chief Justice?

*Witness* : I know it now after reading the evidence of Mr. Singhal.

*Chief Justice* : When did you read the evidence of Mr. Singhal?

*Witness* : I read the evidence of Mr. Singhal when it came out in papers.

*Sixth Hearing (Contd.)*

### MONEY PAID IN COURT

Replying to Mr. Justice Collister, witness stated that four persons paid money in court. One man was taking out Rs. 25, another Rs. 40, and so on, and when the whole amount was collected witness counted the money.

*Mr. Justice Collister :* You happened to be present there and were just helping?

*Witness :* Yes, my lord.

*Chief Justice :* Were the counsel of the accused there?

*Witness :* I do not know whether the counsel of the accused were there. There were only four accused whose money I counted. I do not know if their counsel were there.

*Chief Justice :* Do you realize that it was strange conduct on your part to meddle in this affair?

*Witness :* I did not consider it strange.

*Chief Justice :* Are you a friend of Dr. Dubey?

*Witness :* I am an acquaintance.

*Chief Justice :* To what date does your acquaintance go back?

*Witness :* My acquaintance with Dr. Dubey goes back to about five or six years.

*Chief Justice :* Has that acquaintance developed into friendship?

*Witness :* No, it has not.

*Chief Justice :* When Dr. Dubey came to invite you to tea did he tell you that he wanted you to meet Mr. Devadas Gandhi and Mr. Bharadwaja.

*Witness :* No, he did not.

*Chief Justice :* Did you inquire from him as to what was the particular occasion for that tea party?

*Witness :* I did not inquire as to why the tea party was being held.

*Sixth Hearing (Contd.)*

**Chief Justice :** Was any other person present at the tea party?

**Witness :** There were only four persons, *viz.*, Mr. Devadas Gandhi, Mr. Bharadwaja, Dr. Dubey and myself. Immediately after the tea party Mr. Gandhi left.

Re-examined by Sir Tej Bahadur Sapru, witness stated that on the day when this incident had happened in the court of Mr. Vidyarthi "we had a tea party in our club where amongst others Mr. Bonarjea was present. There, of course, we talked about this incident that money was realized in court."

Witness told their lordships that they had a tea party in honour of Mr. Marsh-Smith immediately after the tea party at Dr. Dubey's place and it was there that he had met Mr. Akbar Husain.

### MR. SURAJBAL DIKSHIT'S EVIDENCE

Rai Bahadur Pandit Surajbal Dikshit next gave evidence on behalf of Mr. Hari Shankar Vidyarthi, Additional Sessions Judge, Meerut. His evidence was not quite audible at the Press table.

Examined by Sir Wazir Hasan, witness said that he was an advocate practising in Meerut since 1898 or 1899. He held the title of Rai Bahadur. He was the President of the Meerut Bar Association. On September 2 he had asked Dr. Dubey to call Mr. Devadas Gandhi "if he would be kind enough to come." Dr. Dubey told witness that perhaps Mr. Gandhi might not be able to come as he was a busy gentleman, but he could send for Mr. Bharadwaja who was Mr. Gandhi's "righthand man." Next day, Dr. Dubey informed witness that Mr. Bharadwaja had come and would go to his place at any time that would suit him. Witness met Mr. Bharadwaja in the afternoon of September 3 at his place and he was accompanied by certain gentlemen including Prof. Dubey and some other professors.

Witness said that the occasion for calling Mr. Gandhi and Mr. Bharadwaja was that on September 1 there was a rumour in the Bar Association that Mr. Vidyarthi had confessed everything to Mr. Akbar Husain and witness thought that if that was so then

*Sixth Hearing (Contd.)*

the whole thing must be confessed before the High Court. As there were conflicting rumours in the Bar as to the words uttered by Mr. Vidyarthi, witness approached Mr. Vidyarthi himself and asked him what he had stated before the District Judge and Mr. Vidyarthi told him that he had admitted his mistake in collecting war funds in open court. He definitely asked him if he had admitted anything about the circular, the Governor or the Chief Justice and Mr. Vidyarthi said it was all false. He believed that this happened on September 2. Then he asked Mr. Vidyarthi whether there was any truth in the rumour that a circular had been issued by the Chief Justice or there were any instructions by the High Court. Mr. Vidyarthi said it was utterly false. Considering that possibly they might have heard a rumour that Mr. Vidyarthi had admitted making a reference to his Excellency the Governor and the Chief Justice, he at once drove to Prof. Dubey's place and there he learnt that Mr. Gandhi and Mr. Bharadwaja had left Meerut. Therefore, he asked Dr. Dubey to call Mr. Gandhi so that he might inform him about the real truth.

## VISIT BY MR. BHARADWAJA

Witness said that on September 3 when Mr. Bharadwaja and a number of friends came to his place he at once realized that those gentlemen had been brought in with a view to figure as witnesses as regards the meeting at his place. Witness told Mr. Bharadwaja that even though Mr. Vidyarthi was a Hindu he was not connected with him in any manner and was not even his caste-fellow. He also told Mr. Bharadwaja that the *Hindustan Times* was a prominent paper, if not of U.P. at least of an adjoining province. He now understood that Mr. Vidyarthi was a Vaish and that Mr. Gandhi was also a Vaish. He told Mr. Bharadwaja that he had particularly called him because he did not want these proceedings to be protracted before the High Court, and to inform him that Mr. Vidyarthi was perfectly definite that no such circular had ever been issued by the High Court. Mr. Bharadwaja thereupon told him—and he was supported by Mr. Dubey—that they were convinced that there was a circular or a letter from the High Court and he would be very grateful if a

*Sixth Hearing (Contd.)*

copy or a photograph of that letter could be obtained. Witness told Mr. Bharadwaja that he was giving him first-hand information, the thing never existed and was not in existence and no copy or photograph could be had. Witness had told him definitely that no such letter or circular existed. He definitely told Mr. Bharadwaja that Mr. Vidyarthi like a gentleman had gone and admitted his mistake about collecting money before Mr. Akbar Husain. He told Mr. Bharadwaja that as no instructions had been issued to judicial officers by the High Court the right thing was to go and offer an apology for the statement. Mr. Bharadwaja said that the *Hindustan Times* would not submit an apology. Witness then told Mr. Bharadwaja that the matter was at an end if he was not going to submit an apology, so far as witness was concerned. When those gentlemen were leaving his place, as a parting thrust Mr. Bharadwaja told him that if witness reconsidered his attitude they would stay over for the night. Witness understood by that if he would supply a copy of the circular then he would stay at Meerut for the night and told Mr. Bharadwaja that their staying would be useless.

*Question :* Did you say to Mr. Bharadwaja or Prof. Dubey that something should be done to save Mr. Vidyarthi?

*Answer :* Most certainly not. Mr. Vidyarthi was not on his trial, as no notice had been issued to him.

*Question :* Did you advise Mr. Vidyarthi to do something in the matter?

*Answer :* I did not advise Mr. Vidyarthi to do anything about the matter. I was told that he intended to go and see the Chief Justice and I told him that he should consult lawyers before he saw the Chief Justice.

*Question :* Did you tell Mr. Dubey and Mr. Bharadwaja that it would be difficult for them to bring lawyers as their witnesses in support of the case?

*Answer :* I told Mr. Bharadwaja and Mr. Dubey that it would be impossible for them to get lawyers to depose to their version of the facts for the simple reason that till then no lawyer had ever

*Sixth Hearing (Contd.)*

told him that Mr. Vidyarthi had made a reference to a circular or his Excellency the Governor or the Chief Justice, or to any letter or instruction.

### CROSS-EXAMINATION

Cross-examined by Sir Tej Bahadur Sapru, witness said that on the last occasion when this case was heard before this court he had appeared as counsel for Mr. Vidyarthi.

*Note (by court):* Before Mr. Surajbal Dikshit entered the witness-box, Sir Syed Wazir Hasan, who is the leading counsel on behalf of Mr. Vidyarthi, asked permission of the court to allow Mr. Dikshit to retire from the case and the permission was granted.

*Question:* When were you actually engaged as counsel in this case by Mr. Vidyarthi at Meerut?

*Answer:* I believe it was three or four days before the last hearing of the case.

*Question:* I suppose what you were expected to do amongst other things was that you should have consultation with your High Court counsel?

*Answer:* Mr. Vidyarthi expected me to conduct the case in the High Court. But when I found that Sir Syed Wazir Hasan was engaged as senior counsel I watched the case and gave him instructions when necessary.

*Question:* Will you please tell us whether you at any time before coming to Allahabad on the last occasion told Mr. Vidyarthi everything that had passed between you and Mr. Bharadwaja on the date of the interview?

*Answer:* I think I did tell Mr. Vidyarthi what had passed between me and Mr. Bharadwaja.

*Question:* And it was after that that you were offered the brief and brought here?

*Answer:* Yes,

*Sixth Hearing (Contd.)*

**Question :** Did you at that time realize that you might be a very important witness?

**Answer :** I did not at that time realize that I might be an important witness in the case. I expected that the gentlemen who would figure as witnesses would speak the truth.

**Question :** For the first time when did you realize that your evidence might be necessary in the case?

**Answer :** At the last hearing when Mr. Bharadwaja was examined in this court, for the first time I realized that I would have to figure as a witness. In fact, Sir Syed Wazir Hasan then informed the court that he would have to produce me as a witness.

**Note (by court):** It is a fact that during the progress of the statement of Mr. Bharadwaja Sir Syed Wazir Hasan informed the court that Mr. Dikshit will have to be examined by him as a witness.

**Question :** You were present here sitting in this court, when Mr. Bharadwaja and Prof. Dubey were examined?

**Answer :** When Mr. Bharadwaja started his evidence about me I was asked by Sir Syed Wazir Hasan, with the permission of the court, to retire and then I walked out of the court-room, even though Sir Tej Bahadur Sapru then said that he did not mind my presence in the court-room.

**Question :** Will you tell us whether you told your counsel before the case was taken up on the last occasion everything that passed between you and Mr. Bharadwaja?

**Answer :** I had not told Sir Syed Wazir Hasan before the case was taken up on the last date of hearing all that had passed between me and Mr. Bharadwaja, because I had thought that neither Mr. Dubey nor Mr. Bharadwaja would make reference to the interview with me.

**Question :** Can you tell us any reason why some of the statements you have made today were not put to Mr. Bharadwaja and Prof. Dubey when they were in the witness-box?

**Answer :** Indeed, I hurriedly noted questions and passed them

*Sixth Hearing (Contd.)*

on to Sir Syed Wazir Hasan while he was cross-examining them. The statements that are made today were put to Mr. Bharadwaja and Mr. Dubey.

*Question :* Are you quite sure that any question was put to Mr. Bharadwaja and Prof. Dubey about the circular? You have said that when Mr. Bharadwaja was leaving you he expected that you might give him either a copy or a photograph of the circular. Why was not this question put to Mr. Dubey and Mr. Bharadwaja?

*Answer :* As far as I remember the questions were put to them.

*Question :* Will you tell us when did you for the first time see Mr. Vidyarthi after these incidents?

*Answer :* I believe it was on September 1 that I saw Mr. Vidyarthi in his chamber.

*Question :* On the 2nd you knew what Mr. Vidyarthi had said?

*Answer :* Yes.

*Question :* Did Mr. Vidyarthi request you to call these men from Delhi?

*Answer :* Mr. Vidyarthi never asked me to call Mr. Gandhi or Mr. Bharadwaja from Delhi.

*Question :* When did you for the first time advise Mr. Vidyarthi, if at all, that he must go and see the Chief Justice?

*Answer :* I did not. He himself told me that he was advised to go to Allahabad and see the Chief Justice.

*Question :* There is a Hindu Sabha at Meerut?

*Answer :* I believe there is a Hindu Sabha.

*Question :* Are you connected with it?

*Answer :* I am the Secretary of the Sanatan Dharm Aushadhalaya.



*Sixth Hearing (Contd.)*

**Question:** I put it to you again, are you connected with the Hindu Sabha or not, either as an official or as a member?

**Answer:** Not that I know of. In fact, there are so many institutions of which I am either member or Secretary or President and there is barely any with which I am not connected.

**Question:** I put it to you that the Hindu Sabha is a very powerful organization and that if you are connected with it you ought to remember it, and if you are not connected with it you ought similarly to remember it?

**Answer:** I am definite that I am not connected with the Hindu Sabha.

**Question:** Did you at any time think that if the allegations which were made against Mr. Vidyarthi in that newspaper comment could be proved it might be a serious thing for Mr. Vidyarthi?

**Answer:** I realized that if the allegations made in the news item were proved to be true it would be serious from the point of view of Mr. Vidyarthi.

**Question:** When you told Mr. Bharadwaja that you were positive or you were satisfied that there was no such circular and he said that there was a circular, did you ask him how he said that there was a circular?

**Answer:** I did not ask Mr. Bharadwaja as to why he said that there was a circular issued by the High Court.

**Question:** When you were convinced that there was no such circular did you take any step to tell the correspondent of the *Hindustan Times* that you were convinced that there was no circular?

**Answer:** Where was the necessity for me to tell him about it? I spoke to Dr. Dubey and Mr. Bharadwaja in my capacity as President of the Bar Association at Meerut and, secondly, because as a member of the Provincial War Committee I thought that if these proceedings were protracted they would be detrimental to the war effort.

*Sixth Hearing (Contd.)*

*Question :* When you advised Mr. Bharadwaja to apologize unconditionally to the High Court did you at the same time suggest to Mr. Dubey that he might similarly advise him?

*Answer :* I never asked Prof. Dubey to persuade Mr. Bharadwaja to apologize.

*Question :* Did you have any talk about this matter with any other judicial officer in Meerut?

*Answer :* No.

*Question :* When Mr. Vidyarthi said that he had spoken to Mr. Akbar Husain, will you please tell us as nearly as possible what he told you?

*Answer :* Mr. Vidyarthi told me that he had admitted before the District Judge that he was sorry for what had taken place. He asked for money as charity for the wounded soldiers and some money was collected in court after the judgment had been pronounced. Then on my question he said that there was no truth about his having spoken about a circular, His Excellency the Governor or the Chief Justice.

*Question :* Did you in your conversation with Mr. Bharadwaja offer to call Mr. Vidyarthi?

*Answer :* I did in the course of the conversation that I had with Mr. Bharadwaja make a suggestion about calling Mr. Vidyarthi, but I at once realized my mistake as Mr. Bharadwaja was not prepared to believe me and he might not even believe Mr. Vidyarthi and this would put Mr. Vidyarthi in an awkward position.

*Question :* Did Mr. Vidyarthi at any time go to your house before you met Mr. Bharadwaja?

*Answer :* Perhaps Mr. Vidyarthi saw me on the morning of September 3 at my house. He lives practically opposite to my house. I told him that I had sent for Mr. Bharadwaja and would inform him of the real facts.

*Question :* When Mr. Bharadwaja left you and said that

*Sixth Hearing* (Contd.)

they would be prepared to stay overnight if you reconsidered the position, you said that you understood that they wanted you to give a copy of the circular. What reason in your opinion had Mr. Bharadwaja to believe that you would be in a position to deliver the copy of the circular to him, or the photograph of the circular?

*Answer* : My idea is that they were thoroughly convinced that there was a circular and I may be induced to go to the judge, Mr. Vidyarthi, and tell him that Mr. Bharadwaja says that there is such a circular.

### EXAMINATION BY COURT

*Question* : Is it a fact that you told Mr. Bharadwaja or Dr. Dubey that a Hindu Judge was being sacrificed?

*Mr. Dikshit* : If I may be permitted to say so it is a big lie. There was no question of a judge being sacrificed. The matter was only between the *Hindustan Times* and the High Court.

Witness said that he knew Mr. Surajbal Swami and he had heard his evidence in court.

*Chief Justice* : Can you suggest any reason why Mr. Surajbal Swami gave false evidence?

*Witness* : Personally, I know of no reason, but subsequent to the statement I have been told of certain things which may be hearsay.

*Chief Justice* : Will you please tell us of those things?

*Witness* : I have now understood that several years ago Mr. Surajbal Swami was a very enthusiastic Congress worker. I do not know how far that information is correct, but somebody told me that he (Mr. Surajbal Swami) was perhaps tried and convicted, I am very sorry to say so after Mr. Surajbal Swami in his evidence had given me a good certificate. As far as I understood he is a gentleman of very strong likes and dislikes and a judge in his capacity as a judge may not be able to please everybody.

*Sixth Hearing (Contd.)*

*Chief Justice* : Are you aware of any misunderstanding between Mr. Vidyarthi and Mr. Surajbal Swami?

*Witness* : Not to my knowledge. Mr. Vidyarthi may be able to throw light on this matter.

„The evidence was then concluded.

### WITNESSES DROPPED

Sir Syed Wazir Hasan told the court that he had intended to call three witnesses. One of them had sent a telegram to their lordships expressing his inability to come. Another gentleman was Mr. Motilal, Government pleader at Meerut, who had not come. He was not present and even for his sake counsel would not ask for an adjournment. Then there was Mr. Gupta, a barrister. Counsel said he did not want to produce him as his witness.

## MR. VIDYARTHI RECALLED

### Lawyers' Statements Obtained After Talk With Dist. Judge

ALLAHABAD, Oct. 28.

Mr. Hari Shankar Vidyarthi, Additional Sessions Judge at Meerut, was cross-examined by the Rt. Hon. Sir Tej Bahadur Sapru in the *Hindustan Times* Contempt Case. At the outset his lordship the Chief Justice expressed his sympathy with Mr. Vidyarthi in his recent bereavement and said that he would not have been sent for but for the fact that his presence was needed.

Cross-examined by the Rt. Hon. Sir Tej Bahadur Sapru, Mr. Vidyarthi denied that either Mr. Singhal or Mr. Gauri Shankar had seen him on August 13 or on any other day. As he had stated before, Mr. Vidyarthi said that he had taken down the written statements of some of the lawyers including that of Mr. Gupta, but he destroyed those statements. Asked if Mr. Gupta was one of the gentlemen summoned on his behalf, witness replied in the affirmative and said that Mr. Gupta had told him at Meerut that a number of people were harassing him and insisting that he should not give evidence against the Congress and Mr. Devadas Gandhi. Mr. Gupta told witness that a number of his friends and possibly also some of his relations had come from Delhi and were bringing pressure to bear upon him.

*Chief Justice :* Whose son is Mr. Devadas Gandhi?

*Witness :* He is Mahatma Gandhi's son.

*Sir Tej Bahadur Sapru :* I suppose these facts you did not know when you summoned Mr. Gupta?

Proceeding, witness stated that Mr. Gupta in his written statement (given to witness) had made a positive statement that witness had made no reference to his Excellency the Governor or the Chief Justice. When he wrote the statement, Mr. Gupta also told witness that Mr. Banerji had asked him not to give evidence against Mr. Gandhi as it would result in some consequences to Mr. Gandhi, but he said that he would not give false evidence.

*Mr. Vidyarthi's Statement (Contd.)*

**Question :** When he said that pressure was being brought to bear upon him, did Mr. Gupta tell you that if he was produced he would make a false statement against you?

**Answer :** No.

Witness was aware that Rai Saheb Motilal, Government Pleader, was served with notice to appear as a witness in the High Court on his behalf. Mr. Motilal was Government Pleader at Meerut appearing in the Dhakoli murder case on behalf of the Crown.

### GOVT. PLEADER'S REFUSAL TO GIVE EVIDENCE

Witness added that Mr. Motilal was a very respectable lawyer and a man of position in Meerut. He did not remember whether Rai Saheb Motilal's statement was taken down in writing by him. Witness volunteered that Mr. Motilal also came to him on the evening of October 24 and stated that there had been great propaganda against him (Mr. Motilal) and that complaints had been made against him (Mr. Motilal) to the Commissioner or Collector and that if he gave evidence against the Congress, those complaints would be pressed, otherwise not.

Asked by the court who had made those complaints, Mr. Vidyarthi said that the complaints were made at the instance of some Congress people and probably Mr. Motilal also said that his explanation had been called for.

**Chief Justice :** Who was the Commissioner to whom the complaints were made?

**Witness :** The complaints were made to Mr. Bonarjea.

**Sir Tej Bahadur Sapru :** Is it for that reason that you did not insist upon Rai Saheb Motilal coming into the witness-box?

**Witness :** I was not present yesterday, but I was told by Rai Bahadur Pandit Surajbal Dikshit this morning that Rai Saheb Motilal had refused to give evidence against the Congress.

**Question :** Did it strike you after seeing Rai Saheb Motilal

*Mr Vidyarthi's Statement (Contd.)*

and Mr. Gupta that it was a very serious thing for any party to tamper with your evidence?

*Witness* : I was in great domestic trouble owing to the death of my son on October 9.

*Question* : Did you bring all these facts relating to Mr. Gupta and Rai Saheb Motilal, which you have just stated, to the notice of your local counsel?

*Answer* : I did bring all these facts concerning Mr. Motilal and Mr. Gupta to the notice of my local counsel, Mr. Surajbal Dikshit.

*Question* : I suppose your intention was that some steps should be taken to prevent tampering with your witnesses?

*Answer* : No. I was all alone and the other side were working in hundreds and thousands.

*Question* : Can you suggest any reason why this matter was not brought to the notice of their lordships?

*Answer* : I was not here yesterday and they came to me at Meerut with the promise that they would give evidence.

*Question* : Am I to take it that notwithstanding the pressure which had been brought to bear on them they gave you the assurance that they would support your case?

*Answer* : Notwithstanding the pressure, they held out the assurance that they would support my case.

*Question* : You know Mr. Surajbal Swami?

*Answer* : Yes, I know him.

*Question* : He does frequently appear before you?

*Answer* : So far as I remember, he appeared only in two or three cases before me.

*Question* : Was there any unpleasantness on those occasions between you and him?

*Answer* : He used to ask irrelevant questions and create

*Mr. Vidyarthi's Statement (Contd.)*

scenes in court. I prevented him from doing so and he generally lost his temper.

*Question :* You knew that Mr. Swami was going to be produced by the opposite party?

*Answer :* Yes. I was not present in court that day when Mr. Swami was examined.

*Question :* Had you brought to the notice of your counsel that Mr. Swami had created scenes in court?

*Answer :* As a matter of fact I never expected that he would give the evidence that he actually gave.

*Question :* From the manner in which he conducted himself in your court on those days had you any reason to believe that he had conceived a great dislike for you, or that he was hostile to you?

*Answer :* No, I did not. But I never thought that he would go to the extent to which he did.

#### LAWYERS' STATEMENTS—WHEN TAKEN

*Question :* You saw Mr. Akbar Husain, District Judge, on September 1?

*Answer :* I saw Mr. Akbar Husain on September 1. He called me into his chamber.

*Question :* Did you take the statements of the lawyers before seeing him or after seeing him?

*Answer :* I did not take written statements before seeing Mr. Akbar Husain as I never knew till then that it was attributed to me that I had made a reference to his Excellency the Governor and the Chief Justice.

*Question :* During the conversation between you and Mr. Akbar Husain was Mr. Banerji present there right through, or only during part of the conversation?

*Answer :* Mr. Banerji was present during part of the conversation that I had with Mr. Akbar Husain.



*Mr. Vidyarthi's Statement (Contd.)*

**Question :** Mr. Akbar Husain did not know when you saw him that the charge against you was that you had mentioned the names of the Chief Justice and his Excellency the Governor in court?

**Answer :** At the time that I saw Mr. Akbar Husain he knew that the charge was being levelled that I had made a reference to his Excellency the Governor and the Chief Justice in the court-room.

**Question :** Did this part of the conversation relating to the charge take place between you and Mr. Akbar Husain in the presence of Mr. Banerji or after he had left?

**Answer :** Two or three minutes after our conversation in the chamber of Mr. Akbar Husain Mr. Banerji was there. I do not remember what part of the conversation took place in the presence of Mr. Banerji and what part after he left.

#### VISIT TO MR. DIKSHIT

**Question :** You saw Rai Bahadur Pandit Surajbal Dikshit on September 3?

**Answer :** I saw him, but I do not remember the date.

**Question :** Supposing I tell you that Mr. Dikshit fixes that date on September 3, would you dispute the correctness of that date?

**Answer :** If Mr. Dikshit says that I saw him on September 3, I must have seen him on that date.

**Question :** With what object did you go to Mr. Dikshit's house?

**Answer :** As far as I remember Mr. Dikshit came to me either on the 1st or 2nd of September and he asked me what the matter was and I told him about the conversation that I had with Mr. Akbar Husain.

**Question :** If you had told him everything that had passed between you and Mr. Akbar Husain, why did you go to see him on the 3rd?

*Mr. Vidyarthi's Statement (Contd.)*

*Answer:* He said to me that either Mr. Gandhi or Mr. Bharadwaja had given the impression to him that I had made a confession to the District Judge that I had made a reference to his Excellency the Governor and the Chief Justice. I told him that the fact that I had collected money for the war fund in court was correct and the rest of the allegations were a tissue of lies.

*Question:* Why did you go to see him on the 3rd?

*Answer:* He told me that he was calling either Mr. Gandhi or Mr. Bharadwaja to correct their impression and, therefore, either he called me, or I myself went to his place.

*Question:* You knew that they would be coming on the 3rd?

*Answer:* I do not remember the date on which either Mr. Gandhi or Mr. Bharadwaja came. Mr. Dikshit told me that they had been sent for, or would be sent for.

*Question:* May I ask you why you were anxious to remove that impression from their mind when the case was already before the court?

*Answer:* I was not anxious, but Rai Bahadur Surajbal Dikshit was anxious to remove that impression from their mind, because he said that he was very much interested in the collection of the war fund and he did not want any fuss to be created.

*Question:* On what date precisely did you engage Mr. Dikshit as your counsel?

*Answer:* I engaged Mr. Dikshit about September 20.

### EXAMINATION BY SIR WAZIR HASAN

Witness, in reply to questions put by Sir Wazir Hasan, said that he knew about the political leanings of Mr. Surajbal Swami. He was a staunch supporter of the Congress and in the last election to the Legislative Assembly of the United Provinces he supported Pandit Pearey Lal Sharma, the Congress candidate, against Sir Sita Ram.

At this stage Sir Tej Bahadur Sapru stated that he had made

*Mr. Vidyarthi's Statement (Contd.)*

inquiries from his clients and he was told that Mr. Surajbal Swami had no connection with the Congress and that he was tried for an offence under Section 124-A, I.P.C., about the year 1921 and was acquitted.

Sir Wazir Hasan drew the attention of witness to the assertions made by Mr. Singhal in his letter in reply to the letter from the *Hindustan Times* office dated August 10, 1941, and witness stated that those assertions were wholly untrue.

LETTER FROM "HINDUSTAN TIMES"  
TO MR. SINGHAL

New Delhi, 9th August, 1941.

Dear Mr. Singhal,

A message sent by you regarding a circular, said to have been issued by the Chief Justice of the Allahabad High Court to the Judicial Officers, appeared in our paper the other day. You wrote that your information was obtained from a "reliable source". Will you please let us know full details about your source? If you can manage to get the circular in question, it may be sent to us by registered post. Otherwise, in any case a copy should be secured and despatched.

The matter is of immense importance and your efforts should proceed in a manner so as to ensure success in getting the things required.

Yours sincerely,  
(Sd.) M. Subrahmanyam.

R. L. Singhal, Esq.,  
4, Raidwara,  
Meerut City.

## MR. SINGHAL'S REPLY

4, Baidwara,  
Meerut, 10th Aug., 1941.

M. Subrahmanyam, Esq.,  
The *Hindustan Times*,  
New Delhi.

Dear Sir,

In reply to your letter of the 9th instant regarding the Circular of the Chief Justice of the Allahabad High Court to the judicial officers I have to state that my news was based on the verbal saying of Mr. Hari Shankar, the Second Additional District and Sessions Judge, Meerut, in the open court and to the lawyers concerned, not only once but several times, in the course of his delivering judgment, which had probably not been completely written by then (for when I requested the Judge to give me the judgment for taking extracts for the Press he told me that it was not ready and I could send a bare message. in the Dhakoli murder case), that as the judicial officers had been asked by the Chief Justice, who had been requested by H.E. the Governor to co-operate in war efforts, to raise subscriptions for war funds it was incumbent upon him that he should also contribute his share.

*Singhal's Letter to "H.T." (Contd.)*

A sum of Rs. 200/- was immediately realized in the court, while one of the legal practitioners told the court that he would pay Rs. 150/- by the next morning positively as the money had been realized from his clients by him as suggested by the Judge. This money was raised from and on behalf of some of the 16 accused who were acquitted in the case.

I may, however, tell you that the Judge seems to have become angry with me since your comments in the paper on 5th instant. So the reports to me state. Knowing as I do his temper I have also given up going to his court lest I might be insulted. He sent for me to his house through his stenographer on the evening of the 5th instant. I, however, told him that I could meet him only if I received a letter from him and that too only in the court and not at his house. I have also heard it say that attempts are being made or have been made to grant the receipts for these sums in the name of some other persons and not of the accused from whom the money was actually realized.

I don't think if I shall be able to lay my hands on a copy of the circular in question.

Yours obediently,

(Sd.) R. L. Singhal.

[NOTE—The round brackets in para 1 do not appear in the original, but as explained by counsel (see page 124) the involved sentence would read all right if it were to be read as if the brackets existed.]

## ANALYSIS OF EVIDENCE

### Sir Tej Bahadur Sapru's Arguments

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ALLAHABAD, Oct. 28.

Sir Tej Bahadur Sapru, in the course of his arguments, said that the documentary evidence in the case was very limited. It consisted of about four or five documents and the rest of the evidence was of oral character. Between August 3 and October 28 so many incidents were crowded that he thought it would be best if he were to give their lordships the incidents and discuss the evidence with reference to each date. He had, therefore, arranged his arguments in strict chronological order.

On August 3 appeared the news item in the *Hindustan Times*, which was sent by the Meerut correspondent, Mr. Singhal. Then on the 5th or 6th appeared certain comments based on that news item. The paper reached Meerut on the 5th. There were two incidents connected with the 5th. The paper reached Meerut on the morning of the 5th and Mr. Vidyarthi's attention was drawn to what appeared in the paper. The fact was that it was on the evening of the 5th that Mr. Yunus Khan, the stenographer of Mr. Vidyarthi, went and left a slip at the residence of Mr. Singhal, which was before their lordships. The slip of paper, which he had read out on the last occasion to the court, was in the handwriting of Mr. Yunus Khan. It was not denied that it bore the signature of Mr. Yunus Khan. The whole of the slip was admitted though Mr. Vidyarthi said that he was not in a position to identify the writing of Mr. Yunus Khan. In that slip Mr. Yunus Khan said that the judge wanted to consult Mr. Singhal in connection with a particular matter. Counsel had put that question to Mr. Vidyarthi. Mr. Vidyarthi had admitted that he had asked Mr. Yunus Khan to call Mr. Singhal and he wanted to speak to him. Mr. Yunus had met Mr. Singhal somewhere on the road and asked him to come to the judge, but Mr. Singhal would not come. The fact was proved beyond all doubt that a slip, exactly the one before their lordships, was taken over to Mr. Singhal's house and left there. When Mr. Yunus Khan visited Mr. Singhal's house he did not find him there and, therefore, he considered it necessary to leave that slip there.

*Sir T. B. Sapru's Arguments (Contd.)*

From August 5 to August 9 was a blank. On August 9 the *Hindustan Times* writes a letter to Mr. Singhal. The letter which was signed by Mr. M. Subrahmanyam, Joint Editor, was read out by the counsel and it was as follows :—

“A message sent by you regarding a circular, said to have been issued by the Chief Justice of the Allahabad High Court to the judicial officers, appeared in our paper the other day. You wrote that your information was obtained from a ‘reliable source.’ Will you please let us know full details about your source? If you can manage to get the circular in question, it may be sent to us by registered post. Otherwise, in any case a copy should be secured and despatched.

“The matter is of immense importance and your efforts should proceed in a manner so as to ensure success in getting the things required.”

Sir Tej Bahadur suggested that the occasion for this letter arose by reason of the fact that their lordships had issued a notice on August 8 and that fact had appeared in the *Leader* and other papers too. Therefore, an occasion arose for them to make an inquiry. They had also received a wire from their correspondent at Allahabad. On August 10, probably the very date on which Mr. Singhal received the above letter at Meerut, he replied. Counsel read out the following reply of Mr. Singhal (marked confidential) to Mr. Subrahmanyam :—

“In reply to your letter of the 9th instant regarding the circular of the Chief Justice of the Allahabad High Court to the judicial officers I have to state that my news was based on the verbal saying of Mr. Hari Shankar, the Second Additional District and Sessions Judge, Meerut, in the open court and to the lawyers concerned, not only once but several times, in the course of his delivering judgment, which had probably not been completely written by then (for, when I requested the judge to give me the judgment for taking extracts for the Press, he told me that it was not ready and I could send a bare message, in the Dhakoli murder case), that as the judicial officers had been asked by the Chief

*Sir T. B. Sapru's Arguments (Contd.)*

Justice, who had been requested by H.E. the Governor to co-operate in war efforts, to raise subscriptions for war funds, it was incumbent upon him that he should also contribute his share.

A sum of Rs. 200 was immediately realized in the court, while one of the legal practitioners told the court that he would pay Rs. 150 by the next morning positively and the money had been realized from his clients by him as suggested by the judge. This money was raised from and on behalf of some of the 16 accused who were acquitted in the case.

"I may, however, tell you that the judge seems to have become angry with me since your comments in the paper on the 5th instant. So the reports to me state. Knowing as I do his temper, I have also given up going to his court lest I might be insulted. He sent for me to his house through his stenographer on the evening of the 5th instant. I, however, told him that I could meet him only if I received a letter from him and that too only in the court and not at his house. I have also heard it say that attempts are being made, or have been made, to grant the receipts for these sums in the names of some other persons and not of the accused from whom the money was actually realized.

"I don't think I shall be able to lay my hands on a copy of the circular in question."

Sir Tej Bahadur said that the substance of the above letter was based on what Mr. Singhal had heard from Mr. Vidyarthi in open court. Assuming that Mr. Singhal had heard anything like that from Mr. Vidyarthi in open court, then in the exercise of his duty as a Press correspondent he passed on that news to his paper, and if he passed on that news to his paper, it was within the competence of the editorial staff to write any fair comments that they thought arose from this news. Whether those comments were fair or not was not a question that he was going to argue at the present moment; he would reserve it till the end.

*Chief Justice:* Is it your contention that on receipt of information from the correspondent it is within the competence of the editorial staff of the paper to make comments irrespective of the



*Sir T. B. Sapru's Arguments (Contd.)*

fact whether those comments might or might not amount to contempt of court?

*Sir Tej Bahadur Sapru* : I am not saying anything of the kind. I said that I would reserve my argument on the question whether they would amount to contempt or not till the last stage. I am only saying they can write fair comments.

*Chief Justice* : What I was asking was this: Is it your contention that even though the information supplied by the correspondence is not correct an editor who makes fair comment on false information is protected from proceedings under the Contempt of Courts Act?

*Sir Tej Bahadur Sapru* : That is not my contention. I am going to deal with this question of the character of the comments later on. But what I say is this, that if it be the fact that the incidents mentioned in this letter happened in Mr. Vidyarthi's court, then the correspondent did nothing extraordinary in sending that news. The main question that your lordships have got to decide in the case is whether in a case like this, assuming that the incidents are correct and were believed, if Mr. Singhal passed on the news to his editor, he was doing anything more than what any other correspondent would have done.

The second point was that when this news was received in the office of the *Hindustan Times* they had no reason to distrust the correspondent with whom they had dealt for the last seven or eight years and with whom they were satisfied. They wrote certain comments based upon that item of news. Whether those comments were justified or unjustified, whether those comments amounted to contempt or did not amount to contempt were questions with which he would deal thoroughly after he had dealt with the evidence in the whole case. But his point was that immediately on the date on which these comments appeared in the *Hindustan Times* (August 5) Mr. Vidyarthi sent his stenographer to the house of Mr. Singhal. If the matter was not of any consequence, if Mr. Vidyarthi asked their lordships to treat him as a judicial officer of experience, if he did not realize that it might have some reaction

*Sir T. B. Sapru's Arguments (Contd.)*

on him if an inquiry was made, why should he have sent Yunus Khan to Mr. Singhal's house?

*Chief Justice* : Was it not a very reasonable conduct on the part of Mr. Vidyarthi to send for Mr. Singhal after having read that news item in the *Hindustan Times* of August 3? That news item was in connection with the Dhakoli murder case. If Mr. Vidyarthi's evidence is true, the moment he read that news item it struck him that this correspondent had supplied some news which was utterly untrue and therefore he tried to inquire from him as to how he supplied that news.

*Sir Tej Bahadur Sapru* : There are two possibilities.

*Chief Justice* : He would do so either with a guilty conscience or a clear conscience.

*Sir Tej Bahadur Sapru* : My position is that he did so with a guilty conscience, notwithstanding the fact that I am very sorry for him because of his recent bereavement. It is part of my duty to deal with him as I would deal with any other witness irrespective of his official position. There are two possibilities. He thought that the correspondent had supplied false news, and, therefore, he sent for Mr. Singhal. That was a reasonable conduct, as your lordship suggests. I would also suggest the possibility that Mr. Vidyarthi might have felt that he had overstepped his discretion in court. So far as Mr. Vidyarthi was concerned, he decided for himself from the very first that it would not matter very much for him if he admitted the fact that he had collected money in open court. At the best he would receive a rebuke for indiscretion. But if he admitted that he had instructions given by the Chief Justice or his Excellency the Governor, that might involve him in serious consequences. These were the two kinds of arguments which would present themselves to any man in the position of Mr. Vidyarthi, any man who had experience of dealing with witnesses and daily tried cases in a court of law.

Therefore, Mr. Vidyarthi said to himself the fact that he had collected money was so well known that he dared not deny it and he must go and tell Mr. Akbar Husain that he had been

*Sir T. B. Sapru's Arguments (Contd.)*

guilty of this indiscretion and considering that that indiscretion was not in his personal interest but for the purpose of the war fund he thought that it would not involve him in serious consequences. At best there would be a criticism of his judicial conduct or a rebuke for indiscretion. But if he did say in open court that he had been asked either by the Chief Justice or by the Governor of the province to raise funds from persons in the position of accused, that might mean a very serious thing in his case and, therefore, from that moment right up to this moment, he had stuck to the position that he admitted the collection of funds to Mr. Akbar Husain.

Sir Tej Bahadur Sapru said that if there was one witness in this case whom he was not going to criticize and whose evidence he accepted so far as these matters were concerned it was Mr. Akbar Husain. He received a visit from a judicial officer of the same standing as himself and that judicial officer went to him and said that he had been guilty of indiscretion and that he had been collecting money in open court. Naturally Mr. Akbar Husain would think that the Additional Judge made an honest confession and spoke in an honest and straightforward manner. Mr. Vidyarthi was taking care not to mention anything with regard to the charge that had been levelled against him, that he had mentioned the name of the Chief Justice and of the Governor. Mr. Akbar Husain had no reason at that time to believe that the name of the Chief Justice or the Governor had been mentioned. He could not have said that his statement was a straightforward and honest one if he had known it. His evidence was thoroughly understandable on the footing that Mr. Vidyarthi went to him with the ingenious defence that he had been guilty of this indiscretion.

*Chief Justice* : Can you suggest any reason why Mr. Vidyarthi in open court on July 31 should have made a false statement to the effect that the Chief Justice had issued instructions and that he had been asked by his Excellency the Governor to collect subscriptions?

*Sir Tej Bahadur Sapru* : Everyone knows that if the name of the Governor or the Chief Justice is brought in in connection with a fund like this it would go very much farther than a mere invitation

*Sir T. B. Sapru's Arguments (Contd.)*

on the part of the District Judge. In that way he would be able to raise money.

### “EXCESSIVE ZEAL”

*Mr. Justice Collister :* It is just excessive zeal on his part.

*Sir Tej Bahadur Sapru :* Excessive zeal in raising money by making a false statement.

*Mr. Justice Collister :* Why this excessive zeal?

*Sir Tej Bahadur Sapru :* Because if he raised more funds he would get credit from the local authorities and from the Government. That is my suggestion and it is for that reason he dragged in the name of his lordship the Chief Justice and of the Governor, whereas the entire evidence shows that the Chief Justice and his Excellency the Governor had nothing to do with a request of this character. My position is that Mr. Vidyarthi did overstep the limits of discretion and dragged in the name of the Chief Justice and of the Governor in collecting funds in court and he had himself admitted that he had done so on a previous occasion. He brought in the names of the Chief Justice and the Governor so as to influence those people who were before him and whom he acquitted.

“Is not there one thing very significant in connection with Singhal's letter?” asked the Chief Justice. According to that letter Mr. Vidyarthi, after mentioning to the accused persons who had been acquitted and their counsel, repeated the same thing to Mr. Singhal and asked him to publish it.

Sir Tej Bahadur Sapru pointed out that the first sentence in that letter was a very involved sentence. He said that it would read all right if the following portion was enclosed within brackets : (for when I requested the judge to give me the judgment for taking extracts for the Press, he told me that it was not ready and I could send a bare message, in the Dhakoli murder case).

The next important date, said Sir Tej Bahadur Sapru, was August 13. According to Singhal's version he went to Mr. Vidyarthi's place on that day, accompanied by Mr. Gauri

*Sir T. B. Saprú's Arguments (Contd.)*

Shankar, and had a personal conversation with him. Singhal in this matter was supported by Mr. Gauri Shankar. He said that at first the judge complimented him for writing English so well. That might be with a view to win him over. Mr. Vidyarthi then said that if an inquiry was made his name should not be mentioned. Mr. Singhal had admitted before their lordships that he wanted to get rid of the judge, because pressure was being brought upon him. He did go to the judge accompanied by Mr. Gauri Shankar, but Mr. Vidyarthi had again today said that he and Mr. Gauri Shankar never did go to him.

### MR. VIDYARTHI'S ANXIETY

*Chief Justice:* There is conflict of testimony. Let us examine the probabilities of the story told by Mr. Singhal. Mr. Singhal in his letter dated August 10 had told the office of the *Hindustan Times* that Mr. Vidyarthi was very angry. "I am avoiding to see him. I did not go to see him at his residence in pursuance of his slip." Three days after Mr. Singhal goes to the judge and the judge's indiscretion knows no bounds. There he compliments him and then he tells him, "Please don't mention my name." Is it probable that after all this and after the letter of August 10 which Mr. Singhal had written Mr. Singhal would ever go to the judge's residence?

Sir Tej Bahadur Saprú asked his lordship to take all the circumstances into consideration. The anxiety of Mr. Vidyarthi to see Mr. Singhal up to the 5th was apparent. That did not require any further comment. So far as the judge was concerned, he could not have known what had passed between the *Hindustan Times* and Mr. Singhal. Therefore, if he was anxious up to the 5th, he would have been anxious to see him later on, particularly when a few days later he must have read in the newspapers that a writ of contempt had been issued by the High Court on Mr. Devadas Gandhi. The writ was issued on August 8 and the news appeared in the *Leader* on August 9, reaching the Meerut public on the 10th. Therefore, the anxiety of Mr. Vidyarthi would have become still greater, and where was the occasion for surprise if, after having read in the newspapers that the Editor and the

*Sir T. B. Sapru's Arguments (Contd.)*

Printer had been called upon to explain their conduct for publishing that paragraph, Mr. Vidyarthi should have felt still more anxious and should have realized that if an inquiry was made there would be an unpleasant situation for him? Mr. Vidyarthi was, therefore, anxious that Mr. Singhal should go and see him. He sent Mr. Ganga Prasad, a relative of the judge, to approach Gauri Shankar to persuade Mr. Singhal to see the judge. This was quite consistent with Mr. Vidyarthi's anxiety on the 5th, which would have increased still more as soon as the news appeared that their lordships had issued a writ of contempt to the Editor and the Printer of the *Hindustan Times*.

*Chief Justice* : If Gauri Shankar's evidence is worth believing.

Sir Tej Bahadur Sapru said that Gauri Shankar had nothing to gain by giving false evidence. Their suggestion was that Gauri Shankar was the man who had really been asked by a relative or friend of the judge, Ganga Prasad, to persuade Singhal to go and meet the judge at his house, so that Singhal might be asked not to disclose the name of the judge. The fact that Singhal would not go to the judge voluntarily and willingly and readily appeared from his letter of the 10th. The visit of Singhal was quite consistent with the anxiety which was agitating the mind of the judge. There was nothing surprising about this visit.

The period from the 13th to the 25th was a blank. On the 25th the notice issued by the court was served on the Editor and the Printer. The period between August 25 and August 31 was again blank. Mr. Devadas Gandhi was in touch with his lawyers, which was perfectly natural. Counsel next referred to the visit to Meerut paid by Mr. Gandhi and Mr. Bharadwaja on August 31 and narrated the incidents which took place there.

*Chief Justice* : If Mr. Devadas Gandhi's affidavit is true, then according to that affidavit Mr. K. N. Banerji told Mr. Bharadwaja that Mr. Vidyarthi had made a confession to Mr. Akbar Husain. Now Mr. Akbar Husain denies that. Therefore either what Mr. Banerji told Mr. Bharadwaja was untrue, or the affidavit was untrue.

*Sir T. B. Sapru's Arguments (Contd.)*

*Sir Tej Bahadur Sapru* : Mr. Banerji may have told Mr. Bharadwaja and yet may not be willing to say that now in view of the statement of Mr. Akbar Husain.

*Chief Justice* : If Mr. Banerji told this to Mr. Bharadwaja, he told a lie if Mr. Akbar Husain is true.

Sir Tej Bahadur Sapru pointed out that Mr. Banerji was not prepared to support it because Mr. Akbar Husain had made a statement to the contrary and he would find it very difficult to go against a judge.

On August 31 Messrs. Gandhi and Bharadwaja met Mr. Banerji at Prof. Dubey's place and the second important incident was that Mr. Banerji himself met Mr. Akbar Husain at a tea party at the instance of Rai Bahadur Pandit Surajbal Dikshit and they had some talk about the matter. On the 31st Mr. Akbar Husain had come to know something of the incidents. His mind was agitated by certain incidents which had taken place in the court of Mr. Vidyarthi in connection with the judgment in the Dhakoli murder case.

On September 1 several incidents happened. Mr. Vidyarthi saw Mr. Akbar Husain in his chamber. Mr. Banerji came there two or three minutes later, according to the evidence of Mr. Vidyarthi. The important thing to note about this conversation was that Mr. Vidyarthi made a confession to Mr. Akbar Husain saying that he had been guilty of indiscretion in collecting money in court. Mr. Vidyarthi admitted indiscretion, but it was limited to the appeal for money and did not include a reference to the Chief Justice and the Governor. Having seen Mr. Akbar Husain, Mr. Vidyarthi comes back and takes down the statements of some lawyers. It became necessary for him to take down the statements of lawyers, because he had a guilty conscience. The fact that he recorded the statements of lawyers was a very significant fact.

*Chief Justice* : On August 31, Mr. Gandhi and Mr. Bharadwaja had gone to Meerut. You say, why should Mr. Vidyarthi take the written statements of certain lawyers? The

*Sir T. B. Sapru's Arguments (Contd.)*

answer is, because Mr. Devadas Gandhi and Mr. Bharadwaja had gone to Meerut on August 31 and had seen Mr. Banerji. He had in his turn seen Mr. Akbar Husain and according to the evidence of Mr. Akbar Husain, Mr. Banerji told him that he was being asked to give evidence on certain matters by Mr. Devadas Gandhi.

Sir Tej Bahadur Sapru said that the fact that Mr. Vidyarthi took down the statements of some lawyers was a very significant fact. His suggestion was that it was due to a guilty conscience. The suggestion of the other side might be that these two gentlemen, Mr. Gandhi and Mr. Bharadwaja, were in Meerut and were trying to gather evidence. If Mr. Devadas Gandhi and Mr. Bharadwaja were unscrupulous enough to tamper with evidence, what step did Mr. Vidyarthi take to prevent it? The first impulse of a person in the position of Mr. Vidyarthi would be, after coming to know that evidence was being cooked up, to tell Mr. Akbar Husain that an attempt was being made to prepare a case against him and he hoped that Mr. Akbar Husain would kindly bring that matter to the notice of the High Court. Mr. Vidyarthi would instruct his counsel to bring that matter to the notice of the High Court. That was never done. I suggest that this story that evidence is being cooked up is an after-thought intended to throw mud on these people and to prejudice your lordships' minds. Mr. Vidyarthi took down the statements of certain lawyers so as to bind them down to those statements, because he knew that an inquiry was going to be made, evidence would have to be tendered and these lawyers could not go against those statements. I cannot say whether after taking down those statements he consulted some lawyer, or whether he applied his own mind independently to the situation, but he thought that the best thing to do was to destroy them.

There was one thing more important than that and that was that he had taken down the statement of Mr. Krishna Swarup, who was a junior advocate of a few months' standing, living with his father-in-law, Mr. Surajbal Swami. Mr. Swami declined to go to the judge and then Mr. Krishna Swarup was sent for. He was almost in tears when he gave evidence. Counsel said that for a District Judge in the position of Mr. Vidyarthi to call a young man



*Sir T. B. Sapru's Arguments (Contd.)*

of four or five months' standing and to get him, after 30 or 40 minutes, to sign a statement was not a creditable thing.

Sir Tej Bahadur said that Mr. Surajbal Swami was one of the most remarkable witnesses that ever attended a court of law. He was a man practising in Meerut before the Sessions Judge and before the criminal courts. There were not many men who would be prepared to take risk by making statements against courts before whom they appeared from day to day. Mr. Swami's evidence was given in a perfectly straightforward manner and in a very impressive manner. .

### NON-PRODUCTION OF WITNESSES

Why did Mr. Vidyarthi destroy the statements he took from the lawyers? He destroyed them because he thought it was indiscretion No. 2 or No. 3 in his case. Having got those statements from lawyers, among them being a barrister-at-law, he had not the courage to produce them, although he summoned them. Now he stated that pressure was being brought to bear upon Mr. Gupta by Congressmen. Counsel had nothing to do in this case with the Congress as political body. Every presumption was made against the Congress, because Mr. Devadas Gandhi was the son of Mahatma Gandhi and, therefore, the theory was that the Congress people were working in his interest. It was not fair either to the Congress or to those men who were being kept back that an element of prejudice should be introduced like this. If Mr. Gupta and Rai Saheb Motilal had given such statements to Mr. Vidyarthi, they should have been produced before them and the other side should have been given a chance of putting questions about them. At any rate, evidence should have been brought before their lordships that Rai Saheb Motilal, a very respectable and a very honourable member of the profession, and Mr. Gupta, a member of the English Bar, were being pressed by so and so.

Sir Tej said it was unjustifiable on the part of Mr. Vidyarthi to drag in the Congress like this. It was like giving the dog a bad name and hanging it. It appeared that because Mr. Devadas Gandhi was the son of Mahatma Gandhi and because he was a

*Sir T. B. Sapru's Arguments (Contd.)*

Congressman's son any presumption would be good enough against the Congress.

*Chief Justice* : You are out to prove a positive case that Mr. Vidyarthi had made the statements attributed to him. Their case was a negative case. Mr. Gupta and Rai Saheb Motilal were present in court. Why did you not summon them as your witnesses? Why did you rest content with the solitary statement of Mr. Surajbal Swami?

*Sir Tej Bahadur Sapru* : I have produced Mr. Surajbal Swami, Mr. Krishna Swarup and some other witnesses. If Rai Saheb Motilal and Mr. Gupta were the men who have given their statements to him, it was for him to produce them. I submit that they were dropped because certain inconvenient questions might be put by us and because they realized that they would not be prepared, now that they were on oath, to support the theory of Mr. Vidyarthi.

*Chief Justice* : Out of the three witnesses summoned by him, the wife of one of them falls seriously ill. The second man who is the Government Pleader does not come to the High Court. Why, because, as Mr. Vidyarthi says, influences are at work and these people have not the courage to give evidence.

*Sir Tej Bahadur Sapru* : That is Mr. Vidyarthi's evidence unsupported by any corroborative evidence. My information, on the other hand, is that they have kept away, because at the last moment they thought that they must not support the statement which they had given under pressure in the judge's chamber. It is one thing for these men to be called in chamber and to give statements like that and quite another thing to come before your lordships and make statements in public on oath. I do submit that they have told Mr. Vidyarthi that they are not prepared to take that step. We were all under the impression that these witnesses would be forthcoming and at the last moment they are thrown out.

*Chief Justice* : I suppose it is admitted on your side that Mr. Bharadwaja wanted a copy or photograph of the circular?

*Sir T. B. Sapru's Arguments* (Contd.)

*Sir Tej Bahadur Sapru* : Mr. Bharadwaja admitted that they were honestly under the impression that there was a circular.

*Chief Justice* : If there was a circular, nobody could conceal it. Why did they want a photograph—to put it in the Press again, or what for?

*Sir Tej Bahadur Sapru* : Probably if there was a circular they might have done so. It was during examination by your lordship the Chief Justice that both Mr. Bharadwaja and Mr. Gandhi said that they were satisfied that there was none now. The real reason why Mr. Vidyarthi saw Rai Bahadur Surajbal Dikshit was that he knew that he was a man of importance and he might do something to keep back the name of Mr. Vidyarthi.

### ANXIETY TO AVOID INQUIRY

*Chief Justice* : Mr. Dikshit says that the purpose of the interview was to impress upon Mr. Bharadwaja the desirability of tendering an apology, because there was no circular in existence.

*Sir Tej Bahadur Sapru* : That question was put to Mr. Bharadwaja and that was denied by him.

*Chief Justice* : It is for us to decide whose evidence we are going to believe on that point.

*Sir Tej Bahadur Sapru* : Why should Mr. Dikshit take it upon himself to advise these people to go to the High Court to tender an apology when he knew that they were in the hands of their lawyers. I can quite understand his intervening as a common friend, or as a person who wanted to bring about peace or who wanted to prevent litigation.

*Chief Justice* : His evidence is this. He says he was convinced that there was no such circular, and he was assured by Mr. Vidyarthi that he had never made any reference to the Chief Justice and the Governor. He said, why make a mountain of a molehill, you are wrong in publishing in your paper that a circular was issued by the Chief Justice and so the only way is to apologize to the High Court.

*Sir T. B. Sapru's Arguments (Contd.)*

*Sir Tej Bahadur Sapru* : My suggestion is that the idea was at the back of the minds of Mr. Vidyarthi and Mr. Dikshit that if these people apologized to the High Court, there would be no inquiry into the conduct of Mr. Vidyarthi.

On an exhaustive review of the whole of the incidents between August 3 and now Sir Tej Bahadur Sapru said that, so far as Mr. Singhal was concerned, his evidence, if they believed him, was that he heard the judge actually using certain words. If they disbelieved him, there was an end of the matter. But he said that he heard those words and there he was supported by Mr. Swami and Mr. Atiar Singh. So far as the inference is concerned he drew the inference that probably the instructions were of a general character. The sub-editor who was responsible for giving headlines used the word 'circular.' The word 'circular' did not occur in what Mr. Singhal said. It occurred in the headline and that was followed by a query. The correspondent thought it better to omit reference to the particular judge and, therefore, he said, 'I reliably learn.'

That by itself would not amount to contempt, submitted counsel. They might find other reasons for holding Mr. Devadas Gandhi guilty of contempt. But a statement like this could not amount to contempt, so far as Mr. Singhal was concerned. If anything, the omission to refer to the District Judge would strengthen his argument that it did not amount to contempt. It must be contempt of court, but no court was referred to here. Therefore, so far as the news message was concerned, whatever fault they might find with it, whether they said Mr. Singhal was accurate or inaccurate, or that the inference drawn by him was incorrect or hasty, that by itself could not amount to contempt in law particularly as no court was mentioned there. Contempt must be contempt of court and nobody else. Contempt might be of the High Court or of the subordinate court. So far as Mr. Singhal was concerned, he made no reference to the judicial officer concerned. He made a general statement and drew an inference from the statement made by Mr. Vidyarthi in court in the presence of Mr. Singhal and other lawyers present there. Therefore, the

*Sir T. B. Sapru's Arguments (Contd.)*

omission to refer to the judge, so far from worsening his case, improved Mr. Singhal's case from a legal point of view, because he committed no contempt of court.

*Chief Justice :* He has committed contempt of the High Court. Publication of a report which in any way is calculated to lower the prestige or reputation of the court amounts to contempt. That is the law, so far as I understand it. He says : "The Chief Justice, I reliably learn, issued a circular."

*Sir Tej Bahadur Sapru :* He says : "I learn from a reliable source that the Chief Justice has issued instructions." The basis of information may be wrong. His own evidence shows that the basis of information was the statement of Mr. Vidyarthi.

*Chief Justice :* The question whether Mr. Vidyarthi made this statement or not is relevant only so far as the question of sentence is concerned. The contempt is there. If Mr. Vidyarthi made this statement in open court, then it would constitute a great mitigation of the offence, and then of course a lenient sentence will have to be passed. But if he did not say so, then the contempt assumes a flagrant character.

*Sir Tej Bahadur Sapru :* The evidence in the case shows that Mr. Vidyarthi did use those words and he is fighting shy of them.

*Chief Justice :* This is a cardinal issue so far as the question of sentence is concerned.

### EXPRESSION OF REGRET

*Sir Tej Bahadur Sapru :* So far as Mr. Devadas Gandhi is concerned, he answered your lordship's questions very fairly. He said, and Mr. Bharadwaja also said, that they were honestly under that impression at one time, but they are convinced now that there was no such circular. He further said that the real reason why they came to that conclusion was that complaints of undue pressure had reached their ears and unfortunately they had also heard that a certain Chief Justice had interested himself in the matter of war fund collections,

*Sir T. B. Sapru's Arguments (Contd.)*

*Chief Justice :* Was it consistent with the responsibility of the editor of a responsible paper to jump to the conclusion from the mere fact that at a certain place pressure was exercised over the collection of war fund that this was being done at the instance of the Chief Justice?

*Sir Tej Bahadur Sapru :* I will not put it as a matter of law but as a matter of common experience. If a thing which is condemned by your lordship on a strictly legal view is good enough for a certain Chief Justice, an ordinary layman might say it might be possibly followed by another Chief Justice.

*Chief Justice :* Is it not a grave injustice to the Chief Justice of the Allahabad High Court?

*Sir Tej Bahadur Sapru :* I am asking you to see the mentality of the man.

*Chief Justice :* These are two passages from the statement of Mr. Bharadwaja : "At this moment do you realize your mistake or not?" His answer : "Now we see that injustice has been done to the Chief Justice by associating him with the collection of war fund. We have been thinking of making amends to his lordship the Chief Justice but we at the same time wanted to place before him all the facts which have come to our knowledge."

*Sir Tej Bahadur Sapru :* Mr. Devadas Gandhi has used even more emphatic language. He said : "I am deeply sorry for having been the unwitting instrument of publishing news which has been unjust to the Chief Justice, and I express my regret."

The Chief Justice inquired why expression of regret had not been forthcoming on a separate paper.

*Sir Tej Bahadur Sapru :* My lord I am prepared to get it typed on half-a-dozen papers.

*Chief Justice :* An expression of regret in contempt cases is to say that "we express regret and throw ourselves on the mercy of the court."

*Sir Tej Bahadur Sapru :* His expression of regret amounts

*Sir T. B. Sapru's Arguments (Contd.)*

to this: "I am deeply sorry that I should have been the source either of doing an injustice to the court, or to the Chief Justice." May I call your lordship's attention to Mr. Devadas Gandhi's statement?

*Mr. Justice Collister*: He has expressed regret but fights shy of apology.

*Sir Tej Bahadur Sapru*: He has not used the word 'apology,' but short of that he has expressed regret.

*Chief Justice*: The dignity of the court can be vindicated only if the word 'apology' is used. Let it be distinctly understood that Law is no respecter of personalities. Is it your contention in the present case that it is not contempt of court?

#### NO CONTEMPT

*Sir Tej Bahadur Sapru*: I said on the last occasion that it does not amount to contempt, but if it does amount to contempt, here are the circumstances. First of all, Mr. Devadas Gandhi has made the clearest possible admission that he has been very sorry.

*Chief Justice*: As my learned brother has observed, while admitting his mistake he fights shy of the word 'apology.'

Sir Tej Bahadur Sapru referred their lordships to the Privy Council judgment in 1936 *Appeal Cases*, p. 322 in which it was laid down that where the authority and position of an individual judge or the due administration of justice was concerned no wrong was committed by any member of the public who exercised the ordinary right to criticize in good faith, in private or public. Counsel said that he cited the case to show that the consideration of the question of malice or *bona fides* was not wholly irrelevant. If they found upon the evidence that Mr. Vidyarthi made a reference to the Chief Justice and the Governor and he had established by evidence that Mr. Vidyarthi had used those words, then it was perfectly justifiable for Mr. Singhal to communicate the news. If it was a fact that the judge made use of the name of the Chief Justice and the Governor, then it was open to the

*Sir T. B. Sapru's Arguments (Contd.)*

Editor to say that he protested against the Chief Justice and the Governor being brought in so as to influence the decision of people with regard to payment of subscriptions.

*Chief Justice* : Then it would be fair comment if in the article the Editor said that such and such judge said so and so in open court.

So far as the word 'circular' was concerned, counsel said that might be an inference from the fact that a certain thing happened in court and Mr. Vidyarthi used language from which it appeared that the subordinate judiciary had been asked to raise subscriptions.

*Chief Justice* : It is not permissible for the editor of any paper to draw inferences against the Chief Justice or any judge.

Sir Tej Bahadur Sapru said that the circular came in because it was said that the Chief Justice and the Governor had asked the judicial officers to act in a particular manner. It could very well be assumed that they asked them by issuing a circular, although in point of fact a circular might not be issued. If it was otherwise not an offence, it would not become an offence by the mere fact that the word 'circular' had been used. So far as the question of the circular was concerned, it was really not of the essence of the matter. So far as the correspondent was concerned, he could not take the responsibility for the publication. Publication was the responsibility of the editor. The responsibility for supplying the news was his. From a legal point of view, so far as contempt was concerned, the facts established that there was some justification for his writing to that effect and that the offence was mitigated, so that it would become merely a technical offence. Contempt was mitigated by the facts and by the expression of unfeigned regret.

### *SIR WAZIR HASAN'S ARGUMENTS*

Sir Wazir Hasan, arguing on behalf of Mr. Vidyarthi, asked their lordships to judge the evidence with reference to the admittedly proved facts, by which he meant the interpretation of certain documents. It was quite clear that Mr. Singhal intended



*Sir Wazir Hasan's Arguments* (Contd.)

to convey the impression that there was a circular. There was no doubt that he wanted to inform the *Hindustan Times* office and the public that there was such a circular. Having discovered the futility of persisting in a written circular, he invented this lie and put it in the mouth of the judge to support his report.

*Chief Justice* : What was the foundation for this invention on his part?

*Sir Wazir Hasan* : His own imagination. He had seen that the Second Additional Sessions Judge at Meerut had collected funds in court. Thereupon he invented this story.

*Chief Justice* : Supposing that you are right in saying that Mr. Vidyarthi did not utter these words, then the whole blame rests on Mr. Singhal. The offence of Mr. Gandhi and of the Publisher is very much minimized, because they had no reason at the time they published the news or made the editorial comment, to believe that Mr. Singhal was supplying them some incorrect news. Relying upon the news supplied by Mr. Singhal, they commented. I know that it is our duty to uphold the prestige of the courts. At the same time I consider that strict sentences in cases of this character do not redound to the prestige of the courts. In considering the question of sentence we have to take into account all the factors that may be in favour of the persons concerned. Here is Mr. Devadas Gandhi, or whoever the sub-editor was. He had this piece of information from Mr. Singhal. Possibly what Mr. Singhal said was incorrect : we don't express an opinion. Having got that information, they came out with comment. Whatever their policy may be, it is not the concern of this court. It is a great mitigation.

*Sir Wazir Hasan* : But in all cases of this nature your lordships must be equally aware that the conduct of the accused during the day-to-day proceedings is also taken into consideration.

*Chief Justice* : If we come to the conclusion that there was a concerted attempt to suborn evidence, then it is an aggravation.

*Sir Wazir Husan's Arguments (Contd.)*

The news item, counsel argued, when considered with reference to its language, was wholly incompatible with the fact—if it was a fact—that Mr. Vidyarthi used that language in open court.

“I reliably learn,” “I understand”—with reference to these expressions used by Mr. Singhal, counsel pointed out that the language was entirely consistent with the suggestion that he was making that, having found himself absolutely unable to procure any copy of any circular, because it did not exist at all, Mr. Singhal had to support his statement by putting those words in the mouth of Mr. Vidyarthi. An interrogation mark in the heading was immaterial. Unless Mr. Vidyarthi was an insane person, there could be no reason for him to invent a lie when there was no circular. Having convicted four out of 20 accused, he was said to have made a pause.....

*Chief Justice* : That part of the story is absolutely untrue. But come to the crux of the situation.

Sir Wazir Hasan said that they had to read it with the rest of the case presented before their lordships.

The Chief Justice remarked that the position of the opposite parties was analogous to that of the accused. Supposing their lordships came to the conclusion that it was not proved that Mr. Vidyarthi said these words, but at the same time they were not prepared to record a finding that it was disproved, then the benefit of that doubt must go to them. As he said technically it was contempt. Even if Mr. Vidyarthi said so, he said what was an utter lie. Repetition of a lie was equally contempt, but it was so technically. What would Sir Wazir Hasan say with regard to this aspect of the case? Suppose their evidence fell short of proving that Mr. Vidyarthi said these words, unless their lordships were prepared to go to the length of holding that their assertion was disproved they could not convict Mr. Singhal holding that he supplied utterly false news. If the matter regarding the words used by Mr. Vidyarthi remained in the region of doubt, then the benefit of doubt went to the opposite party.

*Sir Wazir Hasan's Arguments (Contd.)*

Sir Tej Bahadur Sapru said that the notice issued to his clients showed that it was under quasi-criminal jurisdiction.

As regards the evidence of Mr. Surajbal Swami, Sir Wazir Hasan said that he was full of anger and there was marked contradiction between his evidence and the evidence of his son-in-law. He expressed his indignation with the conduct of the judge immediately after his son-in-law had seen him.

*Chief Justice:* Your argument will be that the very fact that he lost control of himself over that episode of the written statement being taken from his son-in-law shows his bent of mind?

*Sir Wazir Hasan:* Further, he raised no protest at all to whatever the judge was doing then.

*Chief Justice:* Speaking for myself, I don't like the frequent visits of Mr. Devadas Gandhi and Mr. Bharadwaja to Meerut. To me it appears that they were out to fabricate evidence by their repeated visits to Meerut.

Asked why he did not produce his witnesses, Sir Wazir Hasan told the Chief Justice that it was difficult to answer that question except by saying that he had exercised his discretion. The reasons had been supplied by his client. There was a great force working against his witnesses and persons approached them very near the time when their evidence was to be recorded. Mr. Motilal was not really of importance as he was not said to have been present at the time. He was only talking of Mr. Gupta. It was very difficult to take risk in a case of this nature. So far as direct evidence was concerned, there was no reason to disbelieve the statement of Mr. Vidyarthi on this point. He made a similar statement even at his interview with Mr. Akbar Husain.

*Chief Justice:* Your argument is that, faced with an ugly situation, the only way out of the difficulty for Mr. Singhal and the *Hindustan Times* was to attribute these words to the judge?

*Sir Wazir Hasan:* Yes, my lord. You are convinced that at least one material part of the letter he writes is improbable. Mr. Vidyarthi praises the paragraph written by Mr. Singhal and yet

*Sir Wazir Hasan's Arguments (Contd.)*

asks him to absolve him and not to mention his name. This is the act of an insane man. The fact of reading the judgment in two parts is a very material fact. It gives them the occasion for putting those words in the mouth of Mr. Vidyarthi. In view of the proved facts and probabilities, counsel asked the court to hold that Mr. Vidyarthi did not utter those words. For surrounding circumstances he strongly relied on the evidence of Mr. Dikshit.

### GOVERNMENT ADVOCATE'S ARGUMENTS

The Crown case, said Dr. Wali Ullah, Government Advocate, was that the Editor and the Printer were responsible for the publication of the comment on August 6. As against Mr. Singhal the case was that he was responsible for his communication of August 1 which appeared in the paper dated August 3. His submission was that so far as Mr. Singhal was concerned the news which he sent on August 1 in substance made the same allegations which were proved to have been unfounded, namely, that the judicial officers all over the province had been asked by the Chief Justice to collect subscriptions to the war funds.

*Chief Justice* : Your argument is that even if Mr. Vidyarthi said so, that was a lie and the publication of a lie will itself amount to contempt.

The Government Advocate said that the inference was drawn by the sub-editor that there was a circular and Mr. Singhal's position was in no way different from the position of those who were responsible for the comment. Their lordships had considered the comment to amount to gross contempt of court.

*Chief Justice* : A grave reflection on the Chief Justice.

The Government Advocate, proceeding, said that the implications were much more serious indeed. The implications were that the Allahabad High Court had in effect allied itself, by means of the issue of this circular, with the executive authorities in the matter of the collection of the war fund. He referred to the *Amrita Bazar Patrika* case (1935, *Calcutta* p. 419) in which the editor and the printer were convicted for saying in an article

*Govt. Advocate's Arguments (Contd.)*

that the Chief Justice and the Judges of the Calcutta High Court were "hobnobbing with the executive." Sir Tej Bahadur Sapru had said that Singhal's message did not mention the word 'court' and consequently it might be looked upon as a fair report sent up by the reporter. The Government Advocate submitted that this could not be any protection to the reporter if the reporter was found to offend against the law of contempt.

*Chief Justice* : It is impossible in this case to argue that there is no contempt.

The Government Advocate, continuing, said a lie had got to be invented about a so-called circular and on the supposed existence of that circular was based the comment. There was absolutely no suggestion even on behalf of the editor or the printer that there was even a pretence of inquiry or attempt at verification as to the contents of Mr. Singhal's report.

*Chief Justice* : Mr. Bharadwaja in effect had to take shelter under this plea, that because a Chief Justice of a certain High Court did take interest in such matters, therefore he believed that the Chief Justice of the Allahabad High Court might also do the same.

At Meerut, one of the first questions put by Mr. Gandhi and Mr. Bharadwaja was about the reliability of Mr. Singhal, which did not show that they had abundance of confidence in him, said the Government Advocate.

*Chief Justice* : If there was so much confidence, why this inquiry?

The Government Advocate, concluding, said that the comments were made most recklessly, and this report came in very handy considering the general policy of the paper. It suggested that some sort of undue pressure was being exercised in regard to the war fund. Mr. Gandhi and Mr. Bharadwaja had said that they considered that the allegation was a very serious one involving the prestige of the High Court and yet they immediately published it. That was a wilful and culpable act and undoubtedly showed

*Govt. Advocate's Arguments (Contd.)*

gross negligence. There had been no question of any apology so far and there had been no question of any regret till a late stage.

When the court remarked that there had been no spontaneous regret expressed by them, the Government Advocate said that on the contrary there had been false evidence and so there had been really aggravation.

### *SIR TEJ BAHADUR SAPRU'S REPLY*

Replying, Sir Tej Bahadur Sapru said that the case might be divided into two parts, the first part regarding those matters which happened in the court-room and the second part about those matters which took place subsequently.

So far as the matters relating to July 31 were concerned, they could be proved only by the evidence of those persons who were present at that time. Barring the Judge, there was the reporter examined in the case. Mr. Swami, who was a counsel for some of the accused, and Mr. Banerji were also examined. Mr. Gupta was another witness who might have been produced by the other side. He had not been produced and the explanation given was that a great deal of influence was brought to bear on Mr. Gupta. Then there was Rai Saheb Motilal and it was conceded that he was not present in the court.

The real question was whether Mr. Vidyarthi made use of those words or not. If he did not make use of those words, then the whole story was an invention. But if he did make use of those words, the fact remained that those words were used by him.

*Chief Justice :* Then the offence is very much minimized. But, if he did not use those words, the offence is very much aggravated, because of the persistent attempt to give false evidence.

Counsel said that his friends had not given any reason why Mr. Swami should be disbelieved. It was not enough to say that he was angry. What had temper to do with regard to the recollection of events which happened on that day? The question of temper had got no connection with the question of memory. Therefore, Mr. Swami's evidence stood un rebutted except by the

*Sir T. B. Sapru's Reply (Contd.)*

evidence of Mr. Vidyarthi who was an interested witness, because it was a very unpleasant position for a District Judge to appear in court and to give an explanation of his conduct. Mr. Vidyarthi's evidence was that of an interested person and merely because he occupied the position of a District Judge it was not entitled to be accepted. He was collecting money for the war. In doing a right thing he adopted wrong means by mentioning the names of the Chief Justice and the Governor assuming that such mention would have great influence with those who were called upon to pay. Even a District Judge, however well intentioned he might be in regard to the war fund, could not be held as a matter of law above the temptation.

*Chief Justice:* Mr. Vidyarthi said that he had raised subscriptions previously. How is it that on previous occasions his zeal did not lead him to invent this lie?

Sir Tej Bahadur said that the previous appeal got only Rs. 50 and the Judge thought that if he introduced the names of the Chief Justice and the Governor he might meet with better success. He did a good thing by adopting wrong means and was able to secure more money.

### NO EVIDENCE FOR INVENTION STORY

The story that Mr. Singhal invented these words rested merely on suspicion and was not supported by any evidence in the case. Between August 3 and September 9 after the newspaper published the news and the comment, no one from Meerut wrote to the Press saying that there was no element of truth in it. His learned friends did not at all refer to the incident of August 5 as to why Mr. Yunus Khan was sent to Mr. Singhal. His lordship the Chief Justice had some sort of suspicion about the visits to Meerut of his clients. For the first time they went on August 31. Mr. Gandhi returned to Delhi on the evening of the same day, while Mr. Bharadwaja returned on September 2. At the instance of Mr. Dikshit, Mr. Bharadwaja again went to Meerut. Counsel said that these could not be said to be repeated visits.

*Sir T. B. Sapru's Reply (Contd.)*

*Chief Justice :* By August 10, it was known that notice for contempt was issued by this court. They had realized the fact that they would have to enter on their defence. Can you persuade us to believe that between August 10 and August 31 they were doing absolutely nothing?

*Sir Tej Bahadur Sapru :* Mr. Devadas Gandhi has admitted that he was in touch with his lawyers at Delhi. But so far as visits to Meerut are concerned, there is a total absence of evidence.

*Chief Justice :* Can anyone believe that between August 10 and August 31 Devadas Gandhi and the printer and publisher would not have been at pains to discover what evidence would be available to support their story?

*Sir Tej Bahadur Sapru :* Mr. Devadas Gandhi gave a very reasonable answer. He said that after writing this letter to Mr. Singhal he did not take any action so far as Meerut was concerned, because he was waiting for the orders of the High Court. The contempt writ reached them on August 25; therefore why should he conceal the earlier visits? It is mere presumption that one must have gone there before August 31. The more repeated the visits to Meerut the greater the chance for Mr. Vidyarthi to know what they were doing. There is no evidence to show that anyone from Delhi on behalf of my clients visited Meerut during this period and we have no right to assume that they must have been fabricating evidence as we have no right to assume that the judge was doing something wrong during that period. Their very first visit was on August 31.

*Chief Justice :* All that we can say is that Meerut became the scene of considerable activity.

*Sir Tej Bahadur Sapru :* That is what Mr. Swami says, that the atmosphere at Meerut became saturated with feelings on one side or the other. If you attribute feelings to my side, I have a right to attribute feelings to their side. It is not that all my swans are geese and all their geese are swans. There is no justification for the suggestion that any attempt was being made to fabricate evidence by my clients.



*Sir T. B. Sapru's Reply (Contd.)*

### “MOST UNWORTHY STORY”

Sir Tej Bahadur Sapru, proceeding, said that no motive had been assigned as to why Mr. Swami should make a false statement. In fairness the question of his conviction should have been put to him and after inquiry he had denied that fact. It was a long distance from a prosecution for sedition to an attempt to lie. There were many people who had gone to jail for political offences and yet their evidence could not be distrusted. The late Bal Gangadhar Tilak had been convicted for sedition and a subordinate court argued that his evidence could not be believed on that account. He went to the Privy Council and his evidence with regard to adoption had been accepted by the Privy Council.

*Chief Justice* : But the converse of that proposition is also not true that a man who goes to jail is necessarily a truthful witness.

*Sir Tej Bahadur Sapru* : I am interested in denying the tactics adopted in throwing dirt on Mr. Swami after his evidence is over.

Rai Saheb Motilal and Mr. Gupta, whose statements were recorded by Mr. Vidyarthi, were summoned and not produced yesterday. It was a most unworthy story. There was no evidence that some designing persons of the Congress or any political party had tampered with these persons. That is a circumstance absolutely within the region of suspicion not within the region of established facts.

Proceeding, Sir Tej Bahadur Sapru said that his learned friend had described Mr. Banerji as an untruthful witness. They were also in this difficulty, that he told one thing to Mr. Akbar Husain and another thing to them. Mr. Banerji found it inconvenient to deny the fact that money was collected in court. If they rejected that part of the evidence, they must be first prepared to reject the evidence of Mr. Swami and Mr. Attar Singh. He was not as frank as he might have been, but the whole situation must be borne in mind in judging his evidence. The position of a district court lawyer should be borne in mind. He had considerable experience of them. He narrated a certain case

*Sir T. B. Sapru's Reply (Contd.)*

in which an affidavit was to be filed against a judge and the district court lawyer concerned had not the courage to state those facts, although they were absolutely true. He told Sir Tej Bahadur : "*Pani men rahna aur magar se bair !*" (One who lives in a river cannot afford to provoke the hostility of a crocodile.)

Sir Tej Bahadur Sapru said that he had appeared in the *Amrita Bazar Patrika* case for the Editor and the Printer and there was no expression of regret at any stage in that case.

*Chief Justice* : Was there any expression of regret in the sense of an apology so far in this case?

*Sir Tej Bahadur Sapru* : There is a very sincere expression of regret in the affidavit of Mr. Devadas Gandhi and he has repeatedly said that he is sorry that he has been the unwitting instrument of bringing the Chief Justice into disrepute.

*Chief Justice* : There is no apology in this case.

*Sir Tej Bahadur Sapru* : The word 'apology' is not used, but I say that the expression of regret has been there from the very beginning and it has been made in abundance in the statements of Mr. Devadas Gandhi and Mr. Bharadwaja, even though the latter is not an accused.

*Chief Justice* : We shall take note of it.

Mr. Justice Collister pointed out that there was a dissenting judgment in the *Amrita Bazar Patrika* case by one judge.

*Sir Tej Bahadur* : Yes, my lord.

Judgment was then reserved till Friday, November 14, and the three opposite parties were asked to be present in court on that day.

The Rt. Hon. Sir Tej Bahadur Sapru (with Messrs. K. D. Malaviya and Gopalji Mehrotra) appeared for Messrs. Devadas Gandhi, Devi Prasad Sharma and Singhal, Sir Syed Wazir Hasan (with Messrs. S. A. Rafique, C. S. Saran, Raj Bahadur Jaini and Rai Bahadur Suraj Bal Dikshit) for Mr. Vidyarthi and the Government Advocate, Dr. M. Wali Ullah, for the Crown.

## ALL THREE RESPONDENTS CONVICTED

### Sentences Of Imprisonment And Fine

ALLAHABAD, Nov. 14.

In the *Hindustan Times* contempt of court case judgment was delivered today by the Chief Justice and Mr. Justice Collister of the Allahabad High Court, finding Mr. Devadas Gandhi, the Editor, Mr. Devi Prasad Sharma, the Printer, and Mr. R. L. Singhal, the Meerut correspondent, of the *Hindustan Times*, guilty of contempt.

Mr. Devadas Gandhi was sentenced to pay a fine of Rs. 1,000 or in default to undergo one month's simple imprisonment. Mr. Devi Prasad Sharma was fined Rs. 500 or in default one month's simple imprisonment. Two weeks' time was allowed by their lordships for the payment of fine.

Mr. R. L. Singhal was sentenced to two months' simple imprisonment.

Mr. Devadas Gandhi, however, told their lordships that he would prefer to go to jail, because Mr. R. L. Singhal was sentenced to imprisonment without any option of paying fine.

The respondents were also directed to pay costs to the Government Advocate at the rate of Rs. 80 per day.

The judgment covered fifty-two typed pages and their lordships took turns in reading out the whole of it in Court.

### MR. GANDHI'S STATEMENT

As soon as the judgment was read out Mr. Devadas Gandhi rose in his seat and said: "With the permission of your lordships I would like to say a few words. It is a matter of sorrow and pain to me that I have failed to convince this hon. court of the truth of the evidence of my eyes and ears and such other evidence which I have produced and in which I have the same belief as I would have in the evidence of my eyes and ears."

*Mr. Gandhi's Statement (Contd.)*

*The Chief Justice :* We don't allow from a convicted person an address to the court. Please come to the point.

*Mr. Gandhi :* The point I wish to make is that in view of the sentence passed on my correspondent, Mr. Singhal, who has not been allowed the option of fine, I choose to avail myself of the sentence of imprisonment awarded to me in default of payment of fine and not to pay the fine.

The Chief Justice said that Mr. Gandhi could consult his counsel, Sir Tej Bahadur Sapru, if he desired.

Sir Tej Bahadur Sapru said that he had not discussed the matter with his client.

Mr. Gandhi said that he had arrived at his decision independently of his counsel, and he preferred to go to jail.

*The Chief Justice :* The judgment has been delivered and the sentence is there. If you do not pay the fine, the alternative sentence is one of imprisonment and the law will have its course.

Sir Tej Bahadur Sapru requested their lordships to give two weeks' time for the payment of fine. The court, thereupon, passed orders allowing two weeks' time for the fine to be paid. The court then rose and Mr. Singhal, who was sentenced to two months' simple imprisonment, was taken into custody.

## MR. DEVADAS GANDHI SENT TO JAIL

### Fine Not To Be Realized

ALLAHABAD, Nov. 28.

Having elected to go to jail instead of paying the fine, as Mr. R. L. Singhal, his Meerut correspondent, was sentenced to undergo imprisonment without the option of paying a fine, Mr. Devadas Gandhi, Managing Editor of the *Hindustan Times*, Delhi, presented himself before the High Court to receive his sentence. The court-room was packed with members of the Bar and the public.

Their Lordships the Chief Justice and Mr. Justice Collister referred to a letter from Mr. Gandhi to the Registrar of the High Court, stating that he had elected to go to jail instead of paying the fine.

The Chief Justice, addressing Sir Tej Bahadur Sapru, said : "We may take it that he is not going to pay the fine. Then, in the alternative, the sentence of imprisonment would be given effect to. We desire to make it clear that in the ordinary course under the law the fine may be realized even if he goes to jail. In this case it is not our intention to penalize him, but uphold the dignity and honour of the court. Therefore, the fine shall not be realized."

At this stage, Sir Tej Bahadur brought it to the notice of the court that Mr. Singhal had been placed in "C" class, which was not right. This was not an ordinary case, and he was their Lordships' prisoner. He further pointed out that in similar other cases prisoners had been provided with all amenities of life.

The Chief Justice said : "There is nothing farther from our mind than that Mr. Singhal and Mr. Devadas Gandhi be treated as ordinary prisoners. I am sorry the matter had not been brought to our notice earlier, and Mr. Singhal had been in jail for 15 days. If we have any powers, we shall direct that all amenities of life be provided to Mr. Gandhi and Mr. Singhal."

*Mr. Gandhi Sent to Jail (Contd.)*

### SAME CLASS FOR MR. SINGHAL

Their Lordships passed the following order :—

“Mr. Devadas Gandhi having elected to go to jail in lieu of paying the fine, we accordingly direct that he be taken forthwith to Naini Central Jail. We also recommend that he be placed in the highest class permissible under the rules and that he be allowed such amenities as are provided under the rules. We also recommend that Mr. R. L. Singhal, who, we understand, has been placed in “C” class, be treated in the same manner as Mr. Devadas Gandhi.

“Since it was our intention that Mr. Devadas Gandhi should either elect to pay the fine or go to jail and he should not have to pay the fine if he chose the latter alternative, we direct that the fine shall not be realized from him. When he has served out the full term of imprisonment which we have awarded to him, he shall be deemed to have purged his contempt. The Registrar will send a copy of this order immediately to the Superintendent of the Naini Central Jail and to the Superintendent of the District Jail at Allahabad and also to the District Magistrate of Allahabad.”

Mr. Gandhi was then taken to jail escorted by the police. He was seen off by friends and some members of the Bar.

The fine (Rs. 500) imposed on the printer, Mr. Devi Prasad Sharma, and the cost of the Government Advocate (Rs. 480) were deposited a few days after the judgment.

## HIGH COURT MOVED FOR BAIL

### Pending Appeal To Privy Council

ALLAHABAD, Dec. 8.

An application that Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*, New Delhi, be admitted to proper bail pending the disposal of the application for special leave to appeal to the Privy Council was made this afternoon by Mr. Gopalji Mehrotra, Advocate, before Mr. Justice Allsop, who ordered that the application be laid before the bench concerned, the Chief Justice and Mr. Justice Collister.

The application was supported by an affidavit filed by Mr. D. D. Bharadwaja, Assistant Editor of the *Hindustan Times*.

It was stated in the affidavit that the Directors of the Hindustan Times, Ltd., had decided to find the necessary funds for an appeal to their Lordships of the Privy Council on behalf of Mr. Singhal and that on December 4 a cable had been sent from New Delhi to Messrs. Douglas Grant and Dold, Privy Council solicitors in London, instructing them to apply to their Lordships of the Privy Council for special leave to appeal against the conviction and sentence of Mr. Singhal.

It was stated that necessary papers were being sent by air mail, but there was considerable delay owing to war conditions and the term of imprisonment of Mr. Singhal would expire on January 13, 1942.

## **BAIL APPLICATION REJECTED**

### **No Release Pending Appeal To Privy Council**

ALLAHABAD, Dec. 10.

Their Lordships the Chief Justice and Justice Collister today rejected the application for bail made, on the ground of appealing to the Privy Council, on behalf of Mr. R. L. Singhal, Meerut correspondent of the *Hindustan Times*, New Delhi, after hearing Mr. Gopalji Mehrotra, Advocate, who appeared for the applicant.

Mr. Gopalji Mehrotra submitted that the application was made on the ground that they had instructed solicitors in England to file an application for special leave to appeal against the order of the High Court. Their Lordships would see that in this unsettled state it would not be possible for the appeal to come up for hearing before the term of imprisonment of Mr. Singhal was over. In these circumstances the request was that their Lordships would be pleased to exercise their jurisdiction under Section 561-A of the Criminal Procedure Code and release Mr. Singhal on bail. Counsel referred to the case reported in 49 Allahabad, page 247, in which it was laid down that their Lordships were clearly of opinion that they had jurisdiction to entertain the application and that even in the case of a prospective appeal they had jurisdiction to let off the man on bail. Counsel said that in view of the fact that their Lordships had got jurisdiction and in view of the particular circumstances.....

*Chief Justice* : What are the particular circumstances?

Mr. Gopalji Mehrotra submitted that the whole sentence would expire soon and the appeal could not be filed earlier on account of unsettled conditions.

*Chief Justice* : We have to administer the law. Unsettled conditions cannot ruffle the courts.

*Mr. Gopalji Mehrotra* : That will be a circumstance to consider whether your lordships will exercise your jurisdiction under Section 561-A.



*Bail Petition Hearing (Contd.)*

*Chief Justice* : It is no circumstance. The course of justice will go on uninterrupted, settled or no settled conditions.

Mr. Gopalji Mehrotra stated that so far as the question of justice was concerned, it would not be affected at all if the man was let out on bail.

*Chief Justice* : We came to the conclusion that the man was guilty and that the contempt could only be purged if the man remained in jail for two months.

Mr. Gopalji Mehrotra : I do not ask your Lordships to alter your decision, but my submission is that if their Lordships of the Privy Council have got jurisdiction they can interfere with the order of this court.

*Chief Justice* : Then it means that in all cases of contempt where the accused intimates that he is going to appeal to His Majesty in Council the sentence will not be carried out. What are the special circumstances?

Mr. Gopalji Mehrotra submitted that one special circumstance was that their Lordships might apply the test laid down in that criminal appeal referred to by him, if this case came under it. The other circumstance was that their Lordships of the Privy Council had jurisdiction to entertain an appeal. In normal circumstances it would take four months to instruct solicitors, but in this particular case, the circumstances being abnormal, it would take longer.

*Chief Justice* : What are the abnormal circumstances? Mr. Singhal was put in 'C' class. We directed that he should be put in 'A' class and that was done. Only one of the convicted persons proposes to appeal?

Mr. Gopalji Mehrotra : No, my lord, the others have also filed an appeal but they have not come up for bail.

*Chief Justice* : Whatever you are saying will hold good in every case. Is there any special circumstance?

Mr. Gopalji Mehrotra : Your lordships will like to examine

*Bail Petition Hearing (Contd.)*

whether I have got any faintest chance, in view of the special rules which have been laid down, of getting this appeal admitted.

*Chief Justice :* Even if we assume for the purpose of argument that your application for special leave will be granted, it does not follow that the decision of this court will not be upheld. The mere probability of special leave being granted is no ground for granting bail. Because in every contempt case there is a remote possibility of special leave being granted, therefore, according to your argument, it ought to be laid down as a matter of law that in every contempt case in which the accused has been convicted, this court on being intimated that an application for special leave is in contemplation ought to release that man on bail.

Mr. Gopalji Mehrotra submitted that in every contempt case it could not be presumed that special leave would be granted and each case would have to be considered on its merits. If it was presumed that special leave would be granted, then the question of sentence would have to be considered. In this case the sentence was short and would expire in January. If ultimately the appeal was dismissed, the man would have to undergo his remaining sentence.

### COURT'S ORDER

Their lordships then delivered the following judgment :—

“This is an application on behalf of Mr. R. L. Singhal for bail being granted ‘pending the disposal of an application for leave to appeal’ to His Majesty in Council. Mr. Singhal was the Meerut correspondent of the *Hindustan Times* and he along with Mr. Devadas Gandhi, the Editor, and Mr. Devi Prasad Sharma, the Printer and Publisher of the *Hindustan Times*, was convicted for contempt of this court. The order convicting the three persons was passed on November 14, 1941. Mr. Singhal was sentenced to two months’ simple imprisonment, Mr. Devadas Gandhi was sentenced to a fine of Rs. 1,000 and in default of payment of fine to one month’s simple imprisonment, and Mr. Devi Prasad was sentenced to a fine of Rs. 500 and in default of payment of fine to one month’s simple imprisonment.

*Bail Petition Hearing (Contd.)*

“Mr. Singhal surrendered the very day on which he was convicted and has been undergoing the sentence passed on him since then. On behalf of Mr. Devadas Gandhi and Mr. Devi Prasad a request was made by Sir Tej Bahadur Sapru for a fortnight's time being granted for payment of the fine and the time prayed for was granted. Mr. Devi Prasad paid the fine within the time allowed, but Mr. Devadas Gandhi intimated to the Registrar of this court that he preferred to go to jail and was not ready to pay the fine, with the result that Mr. Devadas Gandhi was also sent to jail. On the day on which Mr. Devadas appeared in this court and surrendered himself it was brought to our notice that Mr. Singhal was put in 'C' class and then on our recommendation both Mr. Devadas Gandhi and Mr. Singhal were put as 'A' class prisoners.

“The present application for bail was made on December 8, 1941, i.e., after Mr. Singhal had served about three weeks out of the sentence passed on him. All that is stated in the affidavit that has been filed in support of the application is that a solicitor in England has been instructed to file an application for special leave to appeal to His Majesty in Council. It is admitted that the appeal has not yet been lodged.

“There are no special circumstances to warrant the granting of bail. The application is accordingly dismissed.”

When the judgment had been dictated by the Chief Justice, the Government Advocate got up and said, “What about my costs?” The Chief Justice then added a sentence ordering the applicant to pay Rs. 80 as cost of the Government Advocate.

Mr. Gopalji Mehrotra represented that the man was undergoing sentence in jail, and even the law allowed a man in jail to file application before court without affixing stamp. It would be unjust if the prisoner was made to pay Rs. 80 as costs to Government, merely because his application was rejected.

The Chief Justice then ordered the court stenographer to score out the sentence about awarding costs.

Mr. Gopalji Mehrotra appeared for the applicant and Dr. M. Walliullah, Government Advocate, for the Crown.

## JUDICIAL OFFICERS & WAR EFFORT

### High Court's Circular To Subordinate Courts

ALLAHABAD, Nov. 26.

The following letter dated November 25, 1941, has been addressed to all District Judges subordinate to the High Court of Judicature at Allahabad by Mr. N. Storr, I.C.S., Registrar of the High Court :—

“Sir,—I am desired by the Hon’ble the Chief Justice to address you concerning the position of judicial officers in relation to the war effort, with particular reference to the raising of subscriptions.

A case recently before the Court (Miscellaneous Case No. 8 of 1941) familiarly known as “the *Hindustan Times* contempt case” has attracted a certain amount of inevitable publicity. In the course of this judgement, the Court stated :—

“Mr. Vidyarthi admits that he was zealous in collecting subscriptions to the war fund in his capacity as a private citizen, and he also admits that he did in fact collect money in court from some of the accused persons on the 31st July after their acquittal. It is unnecessary to say that Mr. Vidyarthi was, to say the least of it, highly ill-advised to collect subscriptions in this manner while sitting in court as a judge.”

This judgment and these comments may possibly have given rise to some misapprehension among judicial officers. I am directed to inform you that these comments are not in any way to be read as a direction to judicial officers not to co-operate in any circumstances in the prosecution of the war effort, or as a direction not to assist the executive authorities where judicial officers are personally so inclined and can without impropriety so assist them. There is not the slightest objection to a judicial officer himself subscribing to the war purposes funds or to his being associated with members of the executive or with members of the public in their endeavours to raise such funds, provided that such endeavours have no connection whatsoever with his position as a judge. It is difficult to lay down a general rule which shall provide for all circumstances, but the Chief Justice knows that most judicial officers are aware of what is

*High Court's Circular (Contd.)*

proper and what is not proper in such circumstances. For instance, it would be manifestly improper for a judge to endeavour to raise subscriptions or to be associated with the raising of subscriptions from persons who were in any way parties to judicial proceedings before him or connected with such parties. But in his ordinary social relations as distinct from his work, a judge is a member of society with the same corresponding obligations as any other citizen.

While determined to do all in his power to prevent members of the public from thinking that the subscription or non-subscription by the public to war purposes funds will in any way affect the independence and impartiality of judicial officers, the Chief Justice is also anxious that this should not be distorted into an implied direction that it is the duty of a judge to abstain from any action himself and from any co-operation with the executive authorities concerning the prosecution of the war effort."

# NOTICE TO CORRESPONDENT

BY THE COURT :

Issue notice to Mr. Singhal, correspondent of the *Hindustan Times* at Meerut, to show cause why he should not be dealt with for contempt of this Court with respect to the news published in the *Hindustan Times* of Sunday, August 3, 1941, on information supplied by him.

Mr. Singhal is present in Court and on being instructed by him Sir Tej Bahadur Sapru has accepted notice on his behalf. Sir Tej Bahadur Sapru does not want time to meet the notice. He states that Mr. Singhal's case may be heard along with the case of Mr. Devadas Gandhi and others and that the evidence which will be produced by him will be evidence on behalf of Mr. Devadas Gandhi and others as well as on behalf of Mr. Singhal. Sir Tej Bahadur further states that even though the evidence of Mr. Vidyarthi and Mr. Akbar Husain was recorded at a time when notice was not issued to Mr. Singhal, he has no objection to that evidence being treated as evidence also against Mr. Singhal provided he is allowed to put a few supplementary questions in cross-examination to Mr. Vidyarthi.

Sd. I.A.

Sd. H.J.C.

25-9-'41

**PART II**  
**Judgment**  
**and**  
**Certified Evidence**





# JUDGMENT

*In the High Court of Judicature at Allahabad.*

Criminal Side.

Original Jurisdiction.

Allahabad, dated the 14th November, 1941.

*Present*

The Hon'ble Sir Iqbal Ahmad, Kt.,.....Chief Justice.

And

The Hon'ble H. J. Collister.....Judge.

*Criminal Miscellaneous Case No. 8 of 1941 (Connected  
with Criminal Miscellaneous Case No. 12 of 1941).*

1. Devi Prasad Sharma

King-Emperor *vs.*

And

2. Devadas Gandhi

Division Allahabad.

*By the Court.* On the 8th August last notice was issued to the editor, the publisher and the printer of a newspaper known as the *Hindustan Times* to show cause why action should not be taken against them for contempt of this Court in respect to an editorial comment which appeared in their mufassil edition of the 6th August. The paper is published at Delhi and the same comment had appeared in the local issue of the 5th August.

The editor is Mr. Devadas Gandhi and the publisher and printer is Mr. Devi Prasad Sharma. They appeared before us on the 9th September and also filed affidavits. We heard Sir Tej Bahadur Sapru on their behalf and we reserved orders up to the 15th September. Since the above-mentioned affidavits contained allegations of a serious character against Mr. Vidyarthi, the 2nd Additional Civil and Sessions Judge at Meerut, we called the latter and examined him departmentally on the 11th September. After considering the statement which Mr. Vidyarthi made before us, we directed him to appear and give evidence on oath in the proceedings for contempt of court on the 15th September and we also summoned for the aforesaid date Mr. Akbar Husain, the District Judge of Meerut; and they were both duly examined and cross-

examined on oath on that date. Thereafter, we adjourned the proceedings in order that Mr. Vidyarthi on the one hand and the editor and the publisher of the *Hindustan Times* on the other might each have an opportunity to adduce evidence before the Court; and witnesses have now been called and examined on either side.

On the 25th September we directed that notice should also be served on Mr. R. L. Singhal, the local correspondent of the *Hindustan Times* at Meerut. Mr. Singhal was in Court that day and notice on his behalf was accepted by Sir Tej Bahadur Sapru—who now represents all three respondents.

It is a matter of admission that in the local issue of the *Hindustan Times* of the 5th August last and in the mufassil issue of the 6th August the following editorial comment appeared :—

“If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he has done a thing which would lower the prestige of the courts in the eyes of the people. The presiding officer of a court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to displease. To be absolutely voluntary, war contributions ought to be raised only by non-official committees or individuals. It was bad enough that the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse.”

It is this comment which is the subject-matter of the proceedings for contempt of court. It appears that 20 persons had been committed for trial to the court of Mr. Vidyarthi on a charge under Section 302 and other sections of the Indian Penal Code in what was known as the Dhakoli murder case and judgment was delivered on the 31st July, four of the accused being convicted and sentenced to transportation for life and the remaining 16 being acquitted. On the 1st August, Mr. Singhal sent a news item to the *Hindustan Times* which, after being edited, was published in the issue of the 3rd August. We reproduce below the first three paragraphs of the news item as it appeared in the paper :—

## "JUDICIAL OFFICERS FOR WAR WORK

## RAISING SUBSCRIPTIONS

## NEW CHIEF JUSTICE'S CIRCULAR?

(From Our Correspondent)

MEERUT, Aug. 1.

With the judicial officers also now co-operating actively in the war efforts, the 'efforts' are bound to receive a heavy push forward. The judicial officers all over the province have been, I reliably learn, asked by the new Chief Justice of the Allahabad High Court, who, it is understood, has been requested by his Excellency the Governor for co-operation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it clear to the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds; they could donate as much or as little as they pleased."

The rest of the news item was a summary of the facts of the case in which judgment had been delivered.

It was in connection with this news item that the editorial comment was published in the issue of the 6th August. As we have already said, Mr. Devadas Gandhi swore and filed an affidavit when the matter first came up before us. He begins his affidavit by taking full responsibility for the editorial comment. He says that Mr. Singhal has been their correspondent for more than seven years and neither he nor any member of his editorial staff had ever had occasion to doubt either his efficiency or his honesty and Mr. Gandhi, therefore, assumed that Mr. Singhal must have taken care to verify the accuracy of his report. He then goes on to say that it was no part of his intention to cast any reflection upon the conduct of the Chief Justice or to bring this Court into contempt and he then adds that on the contrary his intention was "to maintain the reputation of the High Court and the purity of administration of justice and to protect the same from being brought into disrepute by the sort of things to which my attention was drawn by my correspondent." He says that Mr. Singhal was in the court of Mr. Vidyarthi on the 31st July and that the Judge, after passing sentence of transportation for life on four of the accused, uttered the following words :—

"Chunke Chief Justice Saheb ne, jinse ke his Excellency the Governor ne war efforts men madad dene ki request ki hai, ham logon se larai ka chanda ikattha karne ke liye kaha hai, is liye hamara yeh farz hai ki ham bhi chanda ikattha karen aur ismen ap log bhi madad karen."

These words are correctly translated in paragraph 11 (b) of the affidavit as follows :—

"Since the Chief Justice, who has been requested by his Excellency the Governor to help in the war efforts, has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work."

Mr. Gandhi states that Mr. Singhal, having heard this utterance with his own ears, sent the news item which was published in the paper on the 3rd August. The affidavit then goes on to say that, after the Judge had spoken these words, the lawyers and the litigants in the court held a hurried consultation between themselves and a sum of Rs. 200 was collected there and then and was placed on the Judge's table and that Mr. Surajbal Swami, a legal practitioner, who was appearing for some of the accused persons, told the court that he would present a sum of Rs. 150 next morning on behalf of his clients; and then Mr. Vidyarthi pronounced judgment of acquittal in respect to 16 of the accused persons. The above statement in the affidavit is based on information received from Mr. Singhal.

Mr. Gandhi then goes on to state in his affidavit that he received the writ of this Court on the 25th August, and on the 31st August he went to Meerut, accompanied by Mr. Bharadwaja, the assistant editor of the paper, with a view to ascertain the facts. At the house of Dr. Dubey, a professor of the Meerut College, Mr. K. N. Banerji, one of the advocates who had been present in court on the 31st July, confirmed the facts which Mr. Gandhi had heard from his correspondent and expressed himself as willing to depose thereto, if necessary, before the High Court. It is further alleged that on the 1st September Mr. K. N. Banerji informed the assistant editor in the presence of Dr. Dubey that he had met Mr. Akbar Husain and had apprised him of the fact that he had met Mr. Gandhi and had made a full statement to him; and Mr. Banerji also told the assistant editor that when Mr. Akbar Husain inquired about the

matter in his presence from Mr. Vidyarthi, the latter admitted having made the statement which had been ascribed to him and having collected subscriptions for the war fund.

Then there is an allegation based on information said to have been given by Mr. Surajbal Swami to the effect that on the 1st September Mr. Vidyarthi had called Mr. Krishna Swarup Sharma, a junior lawyer and a son-in-law of Mr. Surajbal Swami, and had secured from him a signed statement that Mr. Vidyarthi had not given utterance to any such words as were being attributed to him; and Mr. Surajbal Swami was very indignant about this matter. It is stated that on the following day, that is to say on the 2nd September, Mr. Bharadwaja had an interview with Mr. Akbar Husain and brought to his notice the facts which he had learnt from Mr. Surajbal Swami.

It is alleged that on the evening of the 5th September Mr. Vidyarthi sent his stenographer, a man named Mohammad Yunus Khan, to fetch Mr. Singhal, but Mr. Singhal was not at home and Mohammad Yunus Khan, therefore, left a note bearing his signature in which he asked Mr. Singhal to see the Judge in his "parlour," as the Judge wanted to "consult him in a particular matter." We may mention here that the note in question has been filed in court. The affidavit then goes on to say that for some time Mr. Singhal would not go to see the Judge, but he was so importuned by various persons on behalf of Mr. Vidyarthi that at length he went to see the Judge on the 13th August and the latter asked him not to mention his name in any inquiry that might be made.

Towards the end Mr. Gandhi says in his affidavit that he had been receiving complaints from various quarters that officials were exerting pressure for the collection of war subscriptions and reference had been made to this in the Press and on the platform and so he had no reason to suppose that the information received from Mr. Singhal was inaccurate; and since then he has come to know that Mr. Singhal's report was correctly based upon what the Judge had openly and publicly stated in court, and Mr. Gandhi says :

" . . . . in publishing the comments in question my sole motive was to emphasize that the High Court should have nothing to do with regard to the controversy that had sprung up in the country as to the war subscriptions."

Mr. Devi Prasad Sharma also takes full responsibility in his affidavit for the publication of the editorial comment and he identifies himself with the affidavit of Mr. Gandhi.

The headlines of the news item of 1st August published in the issue of the 3rd August were not Mr. Singhal's; they were admittedly supplied by Mr. Bharadwaja. This news item is not the specific subject of the contempt proceedings against Mr. Gandhi and Mr. Sharma, but it supplied the inspiration for the editorial comment which appeared a few days later and the two must be read together. The news item is the subject of the contempt proceedings against Mr. Singhal. Before dealing with the evidence and before discussing whether a contempt has been committed we will first consider what impression the ordinary intelligent reader would receive from a perusal of the editorial comment. It contains a clear insinuation that the Chief Justice had issued a circular to all judicial officers to raise contributions from litigants and others to the war fund, that pressure was thereby being exerted by an authority which "it would not be safe to displease" and that the prestige of the courts would thus be impaired. The implication is that the Chief Justice had done something which was unworthy of a person holding that high office, and that as the head and representative of this High Court he had committed the gross impropriety of forcing the judicial officers subordinate to this Court to ask for war contributions from litigants, who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse. We think there can be no doubt that any intelligent reader would think, or at least suspect, that orders to this effect had probably been issued.

A reader of the news item would conclude that the Chief Justice had acted upon a request from H.E. the Governor.

The above observations will hold good irrespective of the conclusions of fact to which the evidence may lead.

We may mention at once that the allegation—or rather the suggestion—that any such circular was issued is without any foundation whatsoever.

We will leave this matter here for the present and will proceed to state the substance of the evidence on the record with a view to

ascertain whether, and to what extent, the allegations in Mr. Gandhi's affidavit are true; and after that we shall consider whether the facts proved amount in law to a contempt and, if so, which of the respondents are liable for such contempt and whether or not there are any mitigating circumstances.

We will first consider the evidence which has been adduced on behalf of the respondents.

Mr. Singhal says that he was present in Mr. Vidyarthi's court on the 31st July when judgment was delivered in the Dhakoli case. He says that, after convicting and pronouncing sentence on four of the accused, the Judge directed four other accused persons who had been prosecuted on complaint to come forward, and this they did. There was then some talk between the judge and those four persons, which Mr. Singhal was unable to hear, but after that he clearly heard the judge give utterance to certain words which witness repeated before us. It is unnecessary for us to set out that utterance again, for we have already quoted it in connection with paragraph 11 (b) of Mr. Gandhi's affidavit.

Mr. Singhal goes on to say that a consultation followed between the accused persons who had been called up and the lawyers and some other persons, as a result of which Rs. 200 were collected in currency notes and were counted and verified by a lawyer named Mr. Banerji and were placed by someone or other on the judge's table. Witness says that he asked Mr. Vidyarthi to let him see the judgment, but the latter said that it was not yet ready, and witness then left the court. Next day he sent the news item to the *Hindustan Times*; but he says that the facts about the case which are mentioned in that news item were obtained not from Mr. Vidyarthi's judgment, but from the committal order which he had had an opportunity of reading.

Mr. Singhal says that on the 5th August he found a chit which had been left at his house, apparently by Mohammad Yunus Khan. He did not go to Mr. Vidyarthi in response to that chit because he wanted to avoid meeting the judge. When asked by the Court why he wanted to avoid meeting Mr. Vidyarthi, witness said :

“There was no particular reason for it. I cannot suggest any

reason for avoiding to meet the judge except that I was very busy in those days."

Ultimately, however, witness was induced by a man named Gauri Shankar to accompany him to Mr. Vidyarthi's house. This, he says, was on the 13th August. He states that Mr. Vidyarthi first complimented him on the news item, which he said had been "nicely and correctly" written, and he remarked that the editorial comment was also well written, and then he asked Mr. Singhal not to disclose his name or his court in case any enquiry might be made. To this Mr. Singhal agreed, although admittedly he had already mentioned Mr. Vidyarthi's name to the editorial staff of the paper.

Gauri Shankar corroborates Mr. Singhal in respect to the interview with Mr. Vidyarthi on the 13th August. He has known Mr. Singhal for many years and he says that at the instance of one B. Ganga Prasad—who had already introduced witness to Mr. Vidyarthi—he went and persuaded Mr. Singhal to go with him to the judge. Witness says that after complimenting Mr. Singhal on the writing of the news item the judge asked him to let him know if the *Hindustan Times* should make any inquiry from him, and he also asked Mr. Singhal not to name him or his court; and this Mr. Singhal agreed to do.

It appears that B. Ganga Prasad and Gauri Shankar's wife had both been on the Municipal Board and had resigned together, and this will explain why the witness was approached by B. Ganga Prasad. Gauri Shankar described himself as a "public worker" and a Communist. He is the manager of the Free Maternity Home, which was opened and is managed by his wife, and he himself gets Rs. 50 a month from the income of the Home—which apparently consists in voluntary contributions. Witness has no other means of livelihood. He was one of the accused in the Meerut conspiracy case and he was recently sent to jail for four months under the Defence of India Rules.

Attar Singh is a vakil's clerk and he says that he was a *pairokar* on behalf of the prosecution in the Dhakoli case and was present when the judgment was delivered. He says that the judge convicted four of the accused and sentenced them to transportation



for life, but said nothing at that time about the remaining 16 accused. After a minute or two he called up the four accused who had been prosecuted on a complaint and asked them to subscribe to the war fund. These four men kept quiet for a while and then one of them spoke up and said that they had already incurred very heavy expenses in their defence. The judge then said that this was an order from the Governor and the Chief Justice and, therefore, they will have to contribute; and then there was a consultation among the *pairokars* and the counsel and a sum of Rs. 200 was subscribed in currency notes by these four accused. Mr. K. N. Banerji counted the notes and after that Mr. Surajbail Swami said that he would deposit Rs. 150 on behalf of his clients. Mr. Surajbail Swami then asked the judge what orders he was going to pass in respect to the remaining 16 accused, to which the judge replied that these men were acquitted. This was about 15 minutes after the order of conviction in respect to four of the accused persons.

This witness was related to the two men in respect to whose murder the accused persons had been put on their trial, the result of which was, as we know, that 16 out of 20 were acquitted.

The last but one of those witnesses for the respondents who are said to have been present in court on July 31 is Mr. K. N. Banerji. He is an advocate at Meerut and his name has figured with some prominence in this matter. Although he is a witness for the respondents, his evidence only partially supports them. He says that he went to the court of Mr. Vidyarthi after 4 p.m. on the 31st July to inquire about an appeal of his which had been fixed for hearing that day. When he arrived, he saw that money was being collected from some accused persons who had been acquitted by the Judge. There were four men from among the accused who were handing out money and witness assisted them in counting the currency notes and then put them on the judge's table. Witness denies having heard Mr. Vidyarthi mention H.E. the Governor or the Chief Justice, but he says that someone in court told him that the judge had done so. He is unable to say who his informant was, but the latter told him that a circular had come from the Chief Justice.

On the 31st August witness met Mr. Gandhi and Mr. Bharadwaja at tea at the house of Dr. Dubey. Mr. Gandhi asked

him whether he considered Mr. Singhal to be a respectable reporter and he said he did. Mr. Gandhi then asked him whether the incident reported by Mr. Singhal was correct and witness replied that it was correct and that money had been collected in his presence. He says that as Mr. Gandhi was leaving he asked witness for an affidavit, but he did not say specifically what it was that he desired witness to depose to therein.

That same evening, that is to say on the 31st August, witness met Mr. Akbar Husain at another tea party and he told the latter about Mr. Gandhi's visit and said that Mr. Gandhi was trying to get an affidavit from him. He gave this information to Mr. Akbar Husain on the advice of Rai Bahadur Pt. Surajbal Dikshit, the President of the Bar Association. Next day, that is to say on the 1st September, Mr. Akbar Husain called witness to his chambers. Mr. Vidyarthi was there and witness told them both what he knew about the matter. On being asked by the Court whether he had been questioned by Mr. Gandhi or Mr. Bharadwaja as to whether the judge had made any reference to the Governor or to the Chief Justice, witness replied: "That question was never pointedly put to me." When asked what he meant by "pointedly," he replied:

"I mean that that question was never put to me in that form. They asked me whether there was a talk about a circular from the Chief Justice and I said 'yes' "

We will now turn to the evidence of Mr. Gandhi. He says that on the 8th August he received a wire from his correspondent at Allahabad informing him that a writ has been issued against him by this Court. The writ was not actually served upon him until the 25th August; but he did not wait for this. On the 9th August a letter was sent from his office to Mr. Singhal asking for full details as to the "reliable source" mentioned in the news item and also asking Mr. Singhal to procure the circular or a copy of it. This letter—which has been filed in court—concludes as follows:

"The matter is of immense importance and your efforts should proceed in a manner so as to insure success in getting the things required."

On the 10th August Mr. Singhal sent a reply in which he said

that the news item was based on what the judge had said in court. The last sentence of this letter reads :

“I do not think if I shall be able to lay my hands on a copy of the circular in question.”

On the 31st August Mr. Gandhi and Mr. Bharadwaja proceeded to Meerut and went to the house of Dr. Dubey, who is a friend of Mr. Bharadwaja. Mr. Gandhi first asked Dr. Dubey what he knew about Mr. Singhal and Dr. Dubey replied that he knew Mr. Singhal as “a very upright, active and conscientious journalist known to and popular among all circles.” Mr. Gandhi then placed himself in the hands of Dr. Dubey and asked for his assistance. He told Dr. Dubey that according to his information Mr. K. N. Banerji and Mr. Surajbal Swami had been present in court on the 31st July and he asked Dr. Dubey to facilitate a meeting between himself and these two gentlemen. Thereupon Dr. Dubey went off and saw Mr. Banerji and he came back and said that the latter had corroborated in every detail the information which had been received by Mr. Gandhi and he also said that he had asked Mr. Banerji to come round in the afternoon. Mr. Banerji duly arrived about 4 p.m. and in reply to questions put to him by Mr. Gandhi he said that at the time of delivering judgment Mr. Vidyarthi had uttered precisely those words which are reproduced in Mr. Gandhi's affidavit. Mr. Banerji repeated the statement word for word; and thereupon Mr. Gandhi asked him if he would be willing to swear an affidavit, but to this Mr. Banerji replied that he did not think it was necessary. When asked to give a letter to this same effect, he said that he would think about it; but he added that in any event Mr. Gandhi could rely upon him to speak the whole truth in court if he was summoned. Mr. Gandhi left Meerut that evening, but Mr. Bharadwaja stayed on.

In reply to questions put to him by the court Mr. Gandhi states that the news item dated 1st August (which appeared in the issue of the 3rd August) “definitely led him to believe” that a circular or instructions in some other form, had been issued by the High Court directing judicial officers to collect subscriptions to the war funds and he says that “in the extraordinary conditions of the war” he thought that the Chief Justice might conceivably have been drawn

into action "which according to one section of opinion might be considered appropriate, but entirely inappropriate according to another section of opinion."

Then comes Mr. Bharadwaja who, as we have already said, is the assistant editor of the *Hindustan Times*. He says that it was he who supplied the headlines of the news item which appeared on the 3rd August and he says that the reason why he put a question-mark after the word "circular" was that this was an inference from the text of the message. He also says that it was he who added the word "new" before "Chief Justice." Other alterations were made in the news item as received from Mr. Singhal but they are immaterial, except a positional alteration which we shall mention. Mr. Bharadwaja corroborates Mr. Gandhi's statement as regards the visit to Dr. Dubey on the 31st August. Witness says that he has known Dr. Dubey for 20 years; they were contemporaries at college. He states that on the afternoon of the 1st September he again talked to Mr. Banerji at Dr. Dubey's house and that in the meanwhile Mr. Surajbal Swami also arrived and he complained that Mr. Vidyarthi had called his son-in-law to his chambers and had obtained a statement from him to the effect that the judge had not uttered the words which were being attributed to him.

Next morning, that is to say on the 2nd September, Mr. Bharadwaja went and had an interview with the District Judge in respect to these matters. Mr. Akbar Husain told witness that Mr. Vidyarthi had admitted his mistake to him and he expressed the opinion that Mr. Vidyarthi was likely to "get it in the neck" and he said that he had advised him to go to Allahabad and make a clean breast of the whole matter. He also said that Mr. Vidyarthi had written to the Registrar for an early appointment with the Chief Justice.

Mr. Bharadwaja says that he returned to Delhi that day, but came to Meerut again on the following day, that is to say on the 3rd September. That day Rai Bahadur Pt. Surajbal Dikshit, the leading criminal lawyer of Meerut, sent for him and he said to Mr. Bharadwaja that he was anxious to bring about some sort of compromise so as to save Mr. Vidyarthi, to which Mr. Bharadwaja replied that it was a matter between the High Court and the

*Hindustan Times*. He says that from his conversation with Rai Bahadur Pt. Surajbal Dikshit he received the impression that a circular as suggested in the headlines of the news item did exist.

At the end of his examination and cross-examination the court put the following question to Mr. Bharadwaja :

"May it be that all that Mr. Vidyarthi had admitted to Mr. Akbar Husain was his mistake in raising subscriptions for the war fund in the court-room?

To this Mr. Bharadwaja replied :

"Yes. I did not specifically inquire from Mr. Akbar Husain as to what that admission of mistake amounted to. At that time my impression was that it amounted to making the statement implicating the Chief Justice and the Governor in the collection of war funds in court."

When asked by the Court whether he realized the impropriety of involving the Chief Justice of the Allahabad High Court in politics and of associating him with the raising of subscriptions for the war fund, witness replied that because of the experience of the Punjab he did not think it highly improbable that the Chief Justice might have issued the suggested circular. When asked whether the headlines in the news item were calculated to lead the readers of the paper to conclude that what was being alleged against the Chief Justice might probably be true, witness replied :

"The public could form their own conclusion. Some people would think that there was a circular. Some might think that there was not a circular."

Dr. Dubey generally supports Mr. Gandhi and Mr. Bharadwaja as regards whatever is stated to have taken place in his presence. He further says that when he went to see Mr. Banerji the latter told him that Mr. Vidyarthi first delivered a part of the judgment and then referred to a talk which had taken place between the Governor and the Chief Justice and after that he said that some instructions had been received and in response thereto he made an appeal for funds, and some money was collected there and then and was placed on the judge's table. Witness says that Mr. Banerji subsequently repeated these facts to Mr. Gandhi and Mr. Bharadwaja.

Witness says that on the evening of the 2nd September—after Mr. Bharadwaja had left Meerut—he went to see Rai Bahadur Surajbal Dikshit at the latter's request. The Rai Bahadur said to the witness that he wanted to see Mr. Gandhi or Mr. Bharadwaja; he would like to have a talk with them in order that means might be devised, if possible, to save Mr. Vidyarthi. Accordingly Dr. Dubey rang up Mr. Gandhi and that is how Mr. Bharadwaja came to Meerut again on the following day and had an interview with the Rai Bahadur.

When asked in cross-examination whether he or Mr. Bharadwaja had asked the Rai Bahadur for a photographic copy of the alleged circular, witness replied :

“We did not specifically ask Mr. Dikshit, but we said if we could have a photograph of the circular, that would absolve Mr. Vidyarthi of all the responsibility. At the interview Mr. Dikshit said positively that there was no such circular in existence and, therefore, no photographic copy could be had of it.”

This witness met Mr. Gandhi and Mr. Bhardawaja on two occasions after this, once at Delhi and once at Meerut.

Mr. Surajbal Swami is a pleader at Meerut who, when not engaged in practising before the criminal courts, apparently devotes himself to the comparative study of the religions of the world. He appeared for three of the accused in the Dhakoli case; and it would seem from his statement that on the 31st July he was at first in what he calls the “gallery,” the court-room itself being “chock-full.” Someone informed him that warrants were being written and at the request of that person he made his way inside the court to find out what orders had been passed in respect to his clients. He says that inside the court everyone knew that 16 of the accused had been acquitted; this was known because of some talk which took place between the Judge and the lawyers. He denies that the judgment was delivered piecemeal. He says :

“The judgment was delivered between 3 and 4 p.m. He (i.e., the Judge) delivered first the judgment with respect to the four accused persons who were sentenced to transportation for life. He did not deliver the judgment as regards the rest of the accused when

I was there, but the lawyers present there knew that they stood acquitted."

Witness goes on to say that at the instance of the Judge Rs. 200 were collected that day and Rs. 200 more were promised on behalf of two persons who were represented by an advocate from Bijnor, and witness himself ultimately agreed to pay Rs. 150 on behalf of his clients, but the money was not available at the time. When asked in what words the Judge made his appeal, witness replied that he spoke some such words as the following :

"Ham kya karen. His Excellency the Governor Sahab Chief Justice Sahab se mile the. Unhon-ne-ham se kaha aur hamko aisa karna hota hai."

Witness gave these words in Urdu at the invitation of Sir Tej Bahadur Sapru. He says he is positive that he heard the Judge refer to his Excellency the Governor and to his Lordship the Chief Justice.

Witness goes on to state that on several occasions the Judge sent for him, but he declined to go; but eventually he did see Mr. Vidyarthi on the 10th September. Mr. Vidyarthi showed him a copy of Mr. Gandhi's affidavit and asked witness not to give evidence to the effect that he had mentioned the Governor or the Chief Justice in connection with the raising of war subscriptions and he said that he was "unhinged." To this Mr. Surajbal Swami replied :

"Sir, I am not going to tell a lie and I cannot tolerate your face any longer and probably you may also be wishing the same."

Having said this, witness abruptly went away. The reason why witness was so angry with Mr. Vidyarthi was that on the 1st September his son-in-law had been made to sign an untrue statement by the Judge, and it appears that on account of Mr. Surajbal Swami's indignation his son-in-law, a few days later, left Meerut altogether. He says that his son-in-law knew that for the last two years witness had not told a conscious lie and that he had turned his own son out of the house because of his propensity to lying.

Witness says that on various occasions Mr. Bharadwaja and Dr. Dubev tried to get him to make certain statements. but he refus-

ed. He says that two opposing parties had come into existence at Meerut, one being composed of Mr. Bharadwaja, Dr. Dubey and certain leading members of the Congress, and the other being the party of the Judge, who had the support of Rai Bahadur Pandit Surajbal Dikshit, Rai Bahadur Moti Lal—who is apparently the Government Pleader—a barrister named Mr. S. C. Gupta and several other persons, and witness says: "I do not like to drag myself into the mud."

Mr. Krishna Swarup Sharma has also given evidence. He says that on the 1st September he went to see Mr. Vidyarthi at the instance of his father-in-law, whom Mr. Vidyarthi had been sending for. The Judge showed him four or five statements, including a statement by Mr. S. C. Gupta, who had appeared for the same clients as Mr. Surajbal Swami, and he asked witness to copy out Mr. Gupta's statement and then sign it; but witness demurred on the ground that he was not present when judgment was delivered. The Judge, however, kept on pressing him; he said that his retention in service was at stake and that the desired statement would assist him and would do witness no harm. At last witness submitted to Mr. Vidyarthi's persistent requests and signed a copy of Mr. Gupta's statement, which was to the effect that he had been present at the time of delivery of judgment and that the Judge did not state that he had received any instructions from the Chief Justice as regards the collecting of war funds. The Judge made witness write on a separate chit that his father-in-law had not been present when judgment was delivered.

Witness says that when he informed his father-in-law of what had happened the latter became very angry. Witness then went back to Mr. Vidyarthi and asked for the return of his statement, but Mr. Vidyarthi put him off by saying that he would speak to his father-in-law and that the latter would cease to be displeased with him. Next day witness again went to Mr. Vidyarthi with the same request, but received the same reply. Then witness left Meerut on account of his father-in-law's anger and he has taken up his residence at Bijnor.

We will now summarize the evidence which has been adduced on the other side.

Mr. Vidyarthi categorically denies having made any reference to



his Excellency or to the Chief Justice, but he admits having asked for subscriptions. He says that he has been in the habit of raising subscriptions as a private citizen out of court and he states that a week before the incident in question the War Secretary urged him to greater efforts. He says that on the 31st July he read out the operative portion of his judgment convicting some of the accused and acquitting others. He then asked the pleaders who were present to ask their clients—that is to say, those of the accused persons who had been acquitted—to contribute something, if they felt so inclined, to the war fund, observing that the best form of charity these days was to help the wounded soldiers or the survivors of those who had laid down their lives. Rs. 200 were collected there and then and a further sum of Rs. 250 was collected within the next two or three days. Mr. Vidyarthi denies that the Rs. 200 which were collected on the 31st July were placed on his table. He says that the money was left with Mr. S. C. Gupta, who told him next day that he had paid the money to the War Secretary.

Mr. Vidyarthi admits having told his stenographer to call Mr. Singhal to his chambers if he happened to see him in court and he also admits that in fact the stenographer went to the house of Mr. Singhal; but Mr. Vidyarthi denies having actually met Mr. Singhal either on the 13th August or on any other date. The reason why he sent for Mr. Singhal was that he wanted to ask him what foundation there was for the news that a circular had been issued by the Chief Justice; but when he received no reply to the chit which had been left at Mr. Singhal's house, he made no further attempt, direct or indirect, to get hold of him. The Judge admits that B. Ganga Prasad is a distant relative of his, but he denies having asked him to persuade Gauri Shankar to bring Mr. Singhal to see him.

He says that when he had an interview with the District Judge on the 1st September, he told the latter that he had collected subscriptions to the war fund in court and he said to him that he had afterwards realized that this was improper and he expressed his regret. He says that Mr. Akbar Husain asked him to go and see the Chief Justice and tell him all the facts and he actually came to Allahabad for this purpose, but some gentleman at Allahabad advised him that it would be very improper on his part to have an

interview with the Chief Justice and speak about a matter which was pending in court before him; and, accordingly, he did not see the Chief Justice.

Mr. Vidyarthi admits having taken signed statements from Mr. Krishna Swarup Sharma and other pleaders on the 1st September, but he says that he afterwards realized that this was not a proper thing to have done and so he destroyed those statements. He denies having exerted any pressure and he says that one of the pleaders sent his statement from his house. He afterwards told Mr. Akbar Husain about the statements which he had taken. He says that he called Mr. Surajbal Swami to his chambers, but the latter did not come and so he had no talk with him.

When asked to suggest a reason why Mr. Singhal should have sent a false report of what happened in court on the 31st July, witness replied :

“I think it might be due to some misunderstanding based on some conjectures and surmises and once they took up that position they adhered to the same.”

When asked what he meant by “misunderstanding” he said that his impression was that Mr. Singhal was not present in court at all that day and that “he acted on some hearsay or rumour.”

The next witness is Mr. Akbar Husain, the District Judge of Meerut. He says that Mr. K. N. Banerji began to say something to him about this matter at a tea party, but witness suggested to Mr. Banerji that if he had anything important to say he had better come and see him in his chambers; and this Mr. Banerji did. It was on or about the 1st September, and Mr. Banerji told Mr. Akbar Husain that he was worried about this matter of collecting subscriptions to the war fund because he was being asked by Mr. Devadas Gandhi, the Editor of the *Hindustan Times*, to make a statement and witness says he thinks that the statement which Mr. Banerji told him that he was being pressed to make was that he had heard Mr. Vidyarthi say in court that he had received instructions from the Government and from the Hon'ble High Court to assist in the collection of subscriptions to the war fund. He said to Mr. Akbar Husain that in point of fact he had no personal knowledge about the

matter at all; when he went into the court-room on the day in question a sum of money was already being collected. Mr. Akbar Husain told him that if he had no personal knowledge about the matter he had nothing to worry about, and Mr. Banerji then went away. Meanwhile, Mr. Akbar Husain had sent for Mr. Vidyarthi and the latter came while the above conversation was in progress and he stayed on after Mr. Banerji had left. Mr. Vidyarthi said that he wanted to hide nothing; he admitted that he had made a mistake and he said that he regretted it very much and that all that he would say in his defence was that he had acted in absolute good faith. He said that what had actually happened was that after he had pronounced judgment he had suggested to the pleaders for those of the accused persons who had been acquitted that they might as a token of thankfulness contribute something to the war fund, as a result of which a sum of Rs. 500 odd was collected; but he afterwards felt that he had acted improperly and he was very sorry about it. He denied having stated in court that the High Court or the Government had issued instructions to judicial officers to assist in collecting subscriptions. Mr. Vidyarthi also informed witness about his having taken statements from some pleaders and he explained that he had done so "because he had to safeguard his interests against what he considered a campaign of vilification which was afoot."

Mr. Akbar Husain further says that Mr. Bharadwaja came and had an interview with him and said that according to information which he had received by telephone from the local correspondent of the *Hindustan Times* Mr. Vidyarthi had been using undue influence to extract from lawyers practising in his court a statement to the effect that he had not said the things which were being ascribed to him. To this Mr. Akbar Husain replied that he could hardly believe this because Mr. Vidyarthi had already made what he thought was a very frank and straightforward statement as to what took place in court and witness told Mr. Bharadwaja that he thought his local correspondent had been sending false and mischievous information to him.

The next witness is Rai Bahadur Pt. Surajbal Dikshit. He is the leading criminal lawyer at Meerut and, as we have already

said, he is the President of the Bar Association. He states that on the 1st September he heard a rumour in the Bar Room to the effect that Mr. Vidyarthi had made a confession to the District Judge. There were conflicting accounts as regards the nature of the confession which Mr. Vidyarthi was said to have made and accordingly witness approached Mr. Vidyarthi on the 2nd September and inquired from him about the matter. Mr. Vidyarthi told witness that he had been to the District Judge and had admitted his error in collecting money for the War Fund in court from persons who had been acquitted and had expressed his regret. Witness says that he definitely asked Mr. Vidyarthi whether he had admitted anything about a circular or about H.E. the Governor or his Lordship the Chief Justice, and Mr. Vidyarthi replied that any such allegation was totally false. Witness then asked him whether there was any truth in the rumour that a circular or instructions, as alleged, had been received by the judicial officers from the High Court and Mr. Vidyarthi replied that this allegation also was utterly false. In reply to a question put to him in cross-examination witness says that to the best of his recollection Mr. Vidyarthi informed him that what he had admitted before the District Judge was that after judgment had been pronounced in the Dhakoli case he had asked for subscriptions as charity for the wounded soldiers and their families and some money was collected.

That same day witness learnt that Mr. Gandhi and Mr. Bharadwaja were staying with Dr. Dubey and so he went to the latter's house because he thought that they might have heard the rumour about Mr. Vidyarthi having mentioned a circular in court and having made a reference to the Governor of the Province and the Chief Justice. Mr. Gandhi and Mr. Bharadwaja, however, had already left, so witness asked Dr. Dubey to call Mr. Gandhi so that he might be apprised of the truth. Mr. Gandhi did not come, but Mr. Bharadwaja, however, came. This was on the 3rd September and Mr. Bharadwaja was accompanied by Dr. Dubey and a number of professors and other persons. Witness told Mr. Bharadwaja that the reason why he had called him was that he particularly wanted to inform him that "it was a definite and positive fact" that no circular had been issued from the High Court. Also, witness, being a member of the Provincial War Committee, apprehended that if

there was a protracted proceeding in court this might be detrimental to the war efforts, in which he was interested. Notwithstanding the positive assertion which witness gave to them, neither Mr. Bharadwaja nor Dr. Dubey was convinced that there was no such circular and they asked witness to produce a photograph of it. All that witness could do then was to tell them that he could not procure a photograph of a thing which did not exist. He said to them that Mr. Vidyarthi, acting like a gentleman, had admitted his mistake to the District Judge and witness said to Mr. Bharadwaja :

" . . . . You now definitely know that there is no such circular or instructions issued to judicial officers by the Hon'ble High Court and, therefore, the right course for you would be to go like a gentleman and submit an unconditional apology to the High Court for having repeated a false statement without verifying its truth."

To this Mr. Bharadwaja replied that no apology would be forthcoming because he and Mr. Gandhi were both convinced that a circular or instructions as alleged had in fact been issued. The interview then came to an end ; but as Mr. Bharadwaja and his party were leaving, the former remarked to witness that he would be staying at Meerut in case witness might care to reconsider the matter—meaning thereby that he would be at hand to receive a copy or photograph of the circular if witness cared to supply him with it.

Witness emphatically denies having said to Mr. Bharadwaja and Dr. Dubey that something should be done to save Mr. Vidyarthi or having said that "a Hindu Judge was being sacrificed," as alleged by Mr. Bharadwaja in his deposition.

This concludes the evidence. Two of the witnesses who had been summoned by Mr. Vidyarthi were not put into the witness box. These are Mr. S. C. Gupta, a barrister of Meerut, who was admittedly appearing for some of the accused in the Dhakoli case, and Rai Sahib Moti Lal, the Government Pleader. Whether the latter was present in court on the 31st July appears to be open to doubt and no question was put to Mr. Vidyarthi as regards this gentleman, but Mr. Vidyarthi was cross-examined by Sir Tej Bahadur Sapru as regards his reasons for not putting Mr. S. C. Gupta into the witness-box. This was when Mr. Vidyarthi was recalled

for cross-examination after notice had been served on Mr. Singhal. As regards his reason for not producing Mr. S. C. Gupta before the Court, Mr. Vidyarthi says :

"Mr. Gupta was summoned as a witness on my behalf, but he told me that a number of friends, and he also possibly told me that some of his relations who had come from Delhi, were bringing pressure upon him and were harassing him and insisting that he should not give evidence against the Congress and Mr. Gandhi."

As regards Rai Sahib Moti Lal, the Judge volunteered the following statement :

"Mr. Moti Lal also came to me on the evening of the 24th October and said that there had been great propaganda and complaints had been made against him, probably to the Commissioner or the Collector, and that if he gave evidence against the Congress those complaints would be pressed; otherwise not."

In reply to a further question, Mr. Vidyarthi says :

". . . . I was told by Mr. Surajbal Dikshit this morning that Rai Sahib Moti Lal refused to give evidence against the Congress."

We will now proceed to determine whether or not it is proved that the Judge uttered the words which are attributed to him. From the glaring contradictions in the evidence, it is manifest that many untrue facts have been deposed to in these proceedings on one side or the other by persons who would ordinarily be expected to have a high regard for truth. We may say at once that, having had all the witnesses before us, we are of opinion that there are two among them whose credibility is unassailable and we feel that we can confidently accept their testimony as true. These are Mr. Akbar Husain, the District Judge of Meerut, and Rai Bahadur Pandit Surajbal Dikshit; and their evidence will in many instances serve as a criterion for testing and appraising the credibility of other witnesses who have deposed before us.

The positive case set up by the respondents was that Mr. Vidyarthi first convicted four of the accused persons and sentenced them to transportation for life and then stated in open court that the Chief Justice having been requested by H.E. the Governor to

help in the war efforts had sent instructions to the Judges of the subordinate courts to raise subscriptions for the War Fund, and that the Judge went on to say that the persons whom he was addressing should assist him in this matter. Thereupon a consultation took place among the lawyers and the remaining accused persons, with the result that a sum of Rs. 200 was collected and a further sum of Rs. 150 was promised. After this the remaining 16 accused were acquitted. The implication is that until this money was collected the remaining 16 accused were left in ignorance as to whether they were to be convicted or acquitted. If this is what occurred, it was an unpardonable act of extortion on the part of the Judge. The only witnesses, however, who depose in clear terms to this fact are Mr. Singhal and Attar Singh. The latter, as we have already said, was related to two men in respect to whose murder the accused persons had been prosecuted. The evidence of these two witnesses is not supported by Mr. Surajbal Swami, another witness for the respondents, who says it is not true that the judgment was delivered piecemeal. His evidence is to the effect that when he made his entry into the court-room he heard the Judge pass sentence on four of the accused, but he is definite that all the lawyers in court were already aware that the other 16 were acquitted. This they knew by reason of what the judge had said to them before witness entered the court. The following question was put to this witness :

"May I take it that the decision of the Judge as regards all the 20 accused was known to the lawyers at one and the same time, i.e., that four accused had been convicted and the rest acquitted?"

The reply was :

"My lord, this is the position. The lawyers present knew it."

The next question put to witness was :

"Then the accusation against the Judge that he delivered judgment piecemeal is untrue?"

Witness replied :

"Certainly. I may add that we knew that this is the state of affairs."

A further question put to witness was :

"So it is a fact that all at once it was known to everybody concerned that four of the accused had been convicted and the rest acquitted?"

The reply to this question was :

"Yes, even to the persons acquitted and convicted."

This witness, however, does say that he heard Mr. Vidyarthi utter some such words as these :

"What can I do? His Excellency the Governor has met the Chief Justice. The latter has given me instructions and I must act accordingly."

If Mr. Surajbal Swami is a witness of truth, his evidence shows that Mr. Vidyarthi did claim authority from the Chief Justice, and this is, we think, the best evidence that the respondents have been able to adduce. We cannot, however, shut our eyes to the obvious fact that Mr. Surajbal Swami has a considerable animus against Mr. Vidyarthi. He admits that he has an ungovernable temper; and he was very angry when his son-in-law signed a statement at the request of Mr. Vidyarthi, and witness told the latter that he could not tolerate his face. Mr. Surajbal Swami was in the habit of asking irrelevant questions and creating scenes in court and when checked he generally lost his temper. Rai Bahadur Surajbal Dikshit, when asked about Mr. Surajbal Swami, says :

" . . . . as far as I understand he is a gentleman of very strong likes and dislikes and a Judge in his capacity as a Judge may not be able to please everybody at every time."

When asked by Sir Tej Bahadur Sapru on behalf of the respondents to repeat the substance of what the Judge had said, witness hesitated for a while. Thereupon, Sir Tej Bahadur Sapru suggested that witness might prefer to answer the question in Urdu. To this witness gave the following somewhat cryptic reply :

"No, no. It is a question of recollection because I have not talked over the matter to many persons."

This reply would seem to suggest that he had talked over the matter with some persons, and that if he had talked it over with more persons he might have been able to repeat with more accuracy the words used by the Judge. We hope we are not being unfair



to Mr. Surajbal Swami, and in fairness to him we wish to say that if other circumstances did not exist which satisfy us that Mr. Vidyarthi did not use the words ascribed to him, the criticism to which we have subjected the testimony of this witness might not suffice to discredit him.

Mr. Singhal admits that he was unable to hear the "side-talk" which took place between Mr. Vidyarthi and the accused, but he heard the Judge's reference to H.E. the Governor and the Chief Justice so clearly and so attentively that he was afterwards able to repeat it verbatim. This perhaps is not altogether impossible, having regard to the startling nature of the utterance; but what is truly remarkable is that in his news item of the 1st August, which was published in the issue of the 3rd August, he made no mention whatsoever of the Judge having stated that his authority for collecting war subscriptions was based on instructions received from the Chief Justice. He contented himself with saying :

"The judicial officers all over the province have been, *I reliably learn*, asked by the (new) Chief Justice of the Allahabad High Court, who, it is understood, has been requested by his Excellency the Governor for co-operation in war efforts, to raise subscriptions for the War Fund."

The italics are ours and we have put the word "new" in brackets because this word was admittedly added at the time of editing the news item.

If Mr. Vidyarthi made in open court the statement which has been ascribed to him, what conceivable reason would Mr. Singhal have had for not saying what his "reliable source" was? It is in our opinion utterly unbelievable that he would not have reported Mr. Vidyarthi's utterance to the newspaper which he was serving in the capacity of a reporter. It may be said that, since he had not actually verified the receipt of instructions from the Chief Justice, Mr. Singhal might have refrained from reporting the judge's words for the reason that the repetition of an untruth which amounts to contempt of court is itself a contempt, however mitigated. But if Mr. Singhal would have committed a contempt by repeating what the judge said, the contempt was equally contained in what Mr. Singhal actually did report in his news item; in fact it may be said to have been greater since the source of this information was not

stated. We are absolutely convinced that if Mr. Vidyarthi had made in court and in the presence of Mr. Singhal the very remarkable utterance which has been ascribed to him, Mr. Singhal would have at once reported it to the *Hindustan Times*. We have no doubt that he would have reported it in the news item itself; but if not, he would certainly have done so in a separate letter.

Another circumstance which throws considerable doubt on the truth of what Mr. Singhal has stated in Court is this: The original news item sent by him is on the record and we find that first of all he reported the facts of the Dhakoli case and the judgment and then there is an item of news about an altogether extraneous matter and last of all comes the offending item, which we have already reproduced in this judgment. This leaves no doubt in our mind that Mr. Singhal had not heard the judge make the alleged statement while delivering judgment in the Dhakoli case. He knew that money had been collected in court, and he may have heard it said that instructions, as alleged, had been issued by the Chief Justice. This information would be based on an inference from what had happened in court, and possibly the belief may have been held in good faith by persons who were in Court that such instructions must have been issued. Mr. Singhal may either himself have drawn this erroneous inference from what he saw, if he was in court, or he may have accepted what he heard from others.

In connection with the news item we may mention that the original, as sent by Mr. Singhal, was re-arranged by the editorial staff so that the portion at the end beginning with the words, "With the Judicial officers now co-operating actively in the war efforts....." appeared in the newspaper at the commencement of the news item, followed immediately by a statement of the facts of the case and the decision of the Court.

On the 9th August, 1941, the office of the *Hindustan Times* wrote to Mr. Singhal and asked for full details as regards his "reliable source" and in his reply dated 10th August Mr. Singhal said that he had heard the judge make this statement several times in court, and he went on to say that, when he asked to see the judgment, Mr. Vidyarthi replied that it was not ready but he authorized Mr. Singhal to "send a bare message in the Dhakoli

murder case that, as the judicial officers had been asked by the Chief Justice, who had been requested by H.E. the Governor to co-operate in war efforts, to raise subscriptions for war funds, it was incumbent upon him that he should also contribute his share." This is manifestly false. Even assuming that Mr. Vidyarthi under the excitement of an impulse of excessive zeal had taken in vain the names of H.E. the Governor and the Chief Justice, it is quite unbelievable that he would have asked the reporter to have this lie broadcast through the medium of the *Hindustan Times*, which we understand is a journal with a wide circulation.

On his own showing Mr. Singhal has little regard for truth. He says that at Mr. Vidyarthi's request he assured the latter that he would not mention his name, but he admits that he had in fact already done so. Then he says that the reason why he did not at first go to the judge was that he was very busy, but in his letter of 10th August he said that the judge had become very angry with him since the comment had appeared in the issue of 6th August and that he had sent word to the judge that he would only see him on receipt of a letter of request, and then only in court. Obviously he did not want to see the judge, not because he was busy, but for quite different reasons, and in the circumstances we are very doubtful as regards the alleged interview of 13th August— which Mr. Vidyarthi emphatically denies. It is true that Mr. Singhal is corroborated in this matter by Gauri Shanker, but we were not in any way impressed by this witness. The only fact which might give some colour of probability to the alleged interview is that the alleged intermediary, one B. Ganga Prasad, is admittedly a distant relation of Mr. Vidyarthi; but this fact by itself is too tenuous to turn the scale in favour of Mr. Singhal, who in other matters has been proved not to be a witness of truth. The alleged interview in itself is not of much importance but the evidence in respect to it is of importance for the reason that if we accept the testimony of Mr. Singhal and Gauri Shanker, it follows that Mr. Vidyarthi must have lied about the matter. But for reasons which we have given we prefer to accept the latter's own statement in the matter.

Mr. K. N. Banerji is a witness produced by the respondents as

having been one of the lawyers present in court when Mr. Vidyarthi made the alleged utterance. But this witness positively denies having heard the Judge state what has been ascribed to him. He says that someone mentioned to him in court that Mr. Vidyarthi had made a reference to H.E. the Governor and the Chief Justice, but he cannot say who that person was. He states that when he met Mr. Akbar Husain he told him that Mr. Gandhi wanted an affidavit from him; but he denies having made any complaint against Mr. Gandhi or Mr. Vidyarthi. He says that he told Mr. Akbar Husain what he knew, and this he did on the advice of Rai Bahadur Pt. Surajbal Dikshit. What Mr. Akbar Husain says, however, is very different. He says that Mr. Banerji met him at a tea party and stated certain things to him and Mr. Akbar Husain asked him to come and speak to him about the matter next day in his chambers, and this Mr. Banerji did. Mr. Banerji said to Mr. Akbar Husain that he was very worried about the matter of Mr. Vidyarthi having collected subscriptions for the War Fund and he said that Mr. Gandhi was pressing him to make a statement, though he had in fact no personal knowledge of the matter. Mr. Akbar Husain says :

"I believe that what Mr. K. N. Banerji told me when he met me at the tea party was that he was being asked by or at the instance of Mr. Devadas Gandhi to say that he heard Mr. Vidyarthi say that he had instructions from the Government and the Hon'ble High Court to assist in the collection of subscriptions to the War Fund.

Mr. Akbar Husain also says that in his presence Mr. K. N. Banerji stated that no one had mentioned to him about having actually heard Mr. Vidyarthi make the alleged statement. Thus it is clear that Mr. Banerji has not spoken the truth in court in respect to this matter.

Nor does Mr. Banerji support Mr. Gandhi and Mr. Bharadwaja as regards his interview with them on the 31st August at the house of Dr. Dubey. According to Mr. Banerji, all that he was asked was whether Mr. Singhal was a "respectable reporter" and whether the incident reported by him was correct, and witness replied in the affirmative. His evidence, if true, would show that neither Mr. Gandhi nor Mr. Bharadwaja asked him whether the Judge had made a reference to H.E. the Governor or the Chief Justice; all that

they asked him was whether there had been any talk about a circular from the Chief Justice. This statement of Mr. Banerji may or may not be true. We note that, notwithstanding the allegations in paragraph 11 (h) of Mr. Gandhi's affidavit, Mr. Banerji was not asked on behalf of the respondents whether he had heard the Judge make the alleged statement or whether on the 31 August he had confirmed having heard it. In paragraph 11 (k) of the affidavit there is the following allegation :—

"Mr. K. N. Banerji further told Mr. Bharadwaja that upon Mr. Akbar Husain making inquiries from the 2nd Additional Sessions Judge the latter admitted in the presence of Mr. Banerji having made the statement ascribed to him. . . ."

This too was not put to Mr. Banerji on behalf of the respondents. Nor was it put in cross-examination to Mr. Akbar Husain, but it is clear from the latter's evidence that Mr. Vidyarthi made no such statement. Even Mr. Bharadwaja has not deposed to this fact in court. The position is that if Mr. Banerji did tell Mr. Bharadwaja that the Judge had made this admission before Mr. Akbar Husain, he lied, if Mr. Banerji did not say this, the affidavit is untrue.

Then we find serious contradictions between the evidence of Mr. Akbar Husain and the evidence of Mr. Bharadwaja. According to what Mr. Bharadwaja says, Mr. Akbar Husain remarked to him that Mr. Vidyarthi was likely to "get it in the neck." He also told Mr. Bharadwaja that Mr. Vidyarthi had written to the Registrar for permission to have an interview with the Chief Justice (which, we may mention, is not a fact) and that Mr. Vidyarthi proposed to make a clean breast of the whole matter. Mr. Bharadwaja's impression from this talk with Mr. Akbar Husain was that the mistake which Mr. Vidyarthi had admitted was the mistake of implicating the Chief Justice and H.E. the Governor in the collection of war funds in court. Mr. Bharadwaja says that Mr. Akbar Husain also remarked to him that the reporter was "rather indiscreet" in passing on all kinds of information. The evidence of Mr. Bharadwaja does not correspond with what has been deposed to by Mr. Akbar Husain. The latter says that Mr. Bharadwaja complained to him that according to his information Mr. Vidyarthi had been using undue

influence to get lawyers to make a statement to the effect that he had not uttered the words ascribed to him. Mr. Akbar Husain replied that he found it difficult to believe this because Mr. Vidyarthi had already seen him and had made what he thought was a very frank and straightforward statement as to what had happened in court and Mr. Akbar Husain observed that in his opinion the local correspondent of the paper had been sending "false and mischievous information." This is all that Mr. Akbar Husain has stated in respect to his interview with Mr. Bharadwaja and the facts which the latter has deposed were not put to Mr. Akbar Husain in cross-examination. Mr. Akbar Husain says that Mr. Vidyarthi admitted to him having taken the statements of some pleaders and he explained that his reason for doing this was "to safeguard his interests against what he considered a campaign of vilification which was afoot."

Mr. Bharadwaja's evidence is also in conflict with the evidence of Rai Bahadur Pt. Surajbal Dikshit. According to Mr. Bharadwaja's statement, the Rai Bahadur wanted to bring about a settlement so as to save Mr. Vidyarthi. Otherwise, said the Rai Bahadur, "a Hindu Judge will be sacrificed." Mr. Bharadwaja denies the fact of any suggestion having been made by the Rai Bahadur that an apology should be tendered by him to the High Court. He further says that he received an impression from his conversation with the Rai Bahadur that a circular had in fact been issued by the Chief Justice instructing judicial officers to collect war subscriptions. The Rai Bahadur on the other hand says that he definitely told Mr. Bharadwaja that no such circular existed and he said that the right course for him was to submit an unconditional apology to the High Court. To this Mr. Bharadwaja replied that no apology would be submitted because he and Mr. Gandhi were convinced that a circular or instructions had in fact been issued. The Rai Bahadur emphatically denies having said that efforts should be made to save Mr. Vidyarthi. When asked whether he had said that "a Hindu Judge would be sacrificed," witness replied that the allegation was "a big lie."

Dr. Dubey has supported the respondents as regards the interviews with Mr. K. N. Banerji and with Rai Bahadur Pt. Surajbal

Dikshit, but we were unfavourably impressed by his demeanour. He and Mr. Bharadwaja are old friends or "old chums," as described by Mr. Surajbal Swami—of 20 years standing and there can be no doubt that Dr. Dubey has been doing his utmost to assist the respondents. It does not of course necessarily follow from this fact alone that his efforts were not honest but he like Mr. Bharadwaja is contradicted on material points by Mr. Akbar Husain and by the Rai Bahadur. In one respect he does not altogether support Mr. Bharadwaja. Mr. Bharadwaja says that when he asked the Rai Bahadur to procure a photograph of the circular, the latter replied that this was impracticable—which would seem to suggest an admission that the circular did exist, but that there were insuperable difficulties in the way of getting a photograph. Dr. Dubey on the other hand says :

"At the interview Mr. Dikshit said positively that there was no such circular in existence and therefore no photographic copy could be had."

In this respect, but in this respect alone, Dr. Dubey supports the statement of Rai Bahadur Pandit Surajbal Dikshit. Before leaving Dr. Dubey we may mention, that in his evidence he has made an insinuation that it is under the influence of Mr. Akbar Husain and Rai Bahadur Pt. Surajbal Dikshit that Mr. K. N. Banerji has "wavered" and so has not told the whole truth in court.

When the evidence of Mr. Bharadwaja and Dr. Dubey is tested in the light of the evidence given by Mr. Akbar Husain and Rai Bahadur Pt. Surajbal Dikshit, it fails to carry any conviction to us. As regards Mr. K. N. Banerji, if he was not in court at the time when judgment was delivered and was not appearing for any of the accused, it is not apparent why on his arrival he should have assisted in collecting and counting the currency notes. If he was, in court either before or after judgment was delivered, then he certainly told Mr. Akbar Husain that he had no knowledge about the alleged statement of Mr. Vidyarthi and that no one had told him anything about it. We think it is safer to discard the testimony of this witness altogether.

Having analysed the evidence, we are of opinion that not only have the respondents failed to establish the case which they set up, but that in fact Mr. Vidyarthi did not give utterance to the words attributed to him. Mr. Vidyarthi admits that he was zealous in collecting subscriptions to the War Fund in his capacity as a private citizen, and he also admits that he did in fact collect money in court from some of the accused persons on the 31st July after their acquittal. It is unnecessary to say that Mr. Vidyarthi was, to say the least of it, highly ill-advised to collect subscriptions in this manner while sitting in court as a Judge. The contributions were presumably to the Governor's War Purposes Fund and the possibility can, therefore, be contemplated that a Judge, acting as Mr. Vidyarthi did, might perhaps mention the name of H.E. the Governor. But it is in the highest degree improbable—apart from all other considerations—that Mr. Vidyarthi would in open court falsely state that the Chief Justice at the request of H.E. the Governor had instructed judicial officers to raise subscriptions. If the subscriptions were towards the Governor's War Purposes Fund, it is not difficult to imagine that this might suggest to the persons who were present in court that his Excellency might have asked the Chief Justice to issue instructions, as alleged, to judicial officers. It often happens that a suggestion soon becomes a "fact" and is repeated as such. But the language of the news item is, in our opinion, utterly incompatible with the allegation that Mr. Vidyarthi used the words which have been ascribed to him, and for reasons which we have already stated we are absolutely satisfied that the Judge did not say in open court, as alleged, that the Chief Justice at the request of H.E. the Governor had issued instructions for the collecting of war funds. We think that Mr. Singhal founded his report on nothing more substantial than a suggestion, or an easy inference arising from the facts.

So much for our findings of fact, but before we go on to the question of law we wish to say that Mr. Vidyarthi acted in a very unwise and misguided manner after seeing the news item in the issue of the *Hindustan Times* dated the 3rd August. Instead of sending for the reporter, he should have at once written to the High Court stating the true facts or asking for an interview with the Chief Justice in order to explain the facts to him. There has also been



much criticism before us of Mr. Vidyarthi's conduct in taking statements from pleaders on the 1st September and we are of opinion that he would have been better advised not to do so. But in fairness to him we must bear in mind that to his knowledge the respondents were collecting evidence against him and we are unable to accept the bare averment of the young pleader Mr. Krishna Swarup Sharma, that the statement which he signed was false.

We now come to the question whether a contempt has been committed by all or any of the respondents. Sir Tej Bahadur Sapru pleads that there is no contempt or if there is, it is mitigated by justifying circumstances and by an expression of regret.

In our opinion the charge of contempt is established against all the three respondents. In an earlier part of this judgment we have stated what impression an ordinary intelligent reader would receive from reading the editorial comment of the 6th August. For the sake of convenience we may re-produce here a passage from those observations. We have said :

"It (*i.e.*, the comment) contains a clear insinuation that the Chief Justice had issued a circular to all judicial officers to raise contributions from litigants and others to the War Fund, that pressure was thereby being exerted by an authority which 'it would not be safe to displease' and that the prestige of the courts would thus be impaired. The implication is that the Chief Justice had done something which was unworthy of a person holding that high office and that as the head and representative of this High Court he had committed the gross impropriety of forcing judicial officers subordinate to this court to ask for war contributions from litigants who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse."

We then expressed our opinion that any intelligent reader of the comment would think—or would at least suspect—that orders to this effect had probably been issued. We also said that a reader of the news item would conclude that the Chief Justice had issued the alleged circular at the request of H.E. the Governor.

In this connection Mr. Bharadwaja himself admits that "some people would think that there was a circular some might think that there was not a circular."

It is a matter of common knowledge that there is a political controversy in India as to the propriety or otherwise of contributing to the war effort, and the publications in question would necessarily have the effect of dragging the Chief Justice of this Court, as such, into that political controversy. They amount to an imputation against the Chief Justice in his official capacity. In *Surendra Nath Banerjea v. the Chief Justice and Judges of the High Court at Fort William in Bengal*, I.L.R., 10 Calcutta, p. 109, it was recognized by the Judicial Committee of the Privy Council in the judgment of Sir Barnes Peacock at page 130 that a contempt might be not only by a libel against a Judge in his judicial capacity but also by a libel in reference to his conduct in the discharge of his public duties. There is an insinuation in the present case that the Chief Justice was acting under the influence of the Executive, for the comment is based upon and inspired by the news item which had been published on the 3rd August. The case of *Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika*, and another, A.I.R., 1935, Calcutta p. 419, was concerned with proceedings for contempt of court in respect to the publication of a leading article which contained the following words :

"It is so unfortunate and regrettable that at the present day the Chief Justice and the Judges find a peculiar delight in hobnobbing with the Executive, with the result that the judiciary is robbed of its independence which at one time attracted the admiration of the whole country."

It was held by four out of the five learned Judges composing the Bench that a contempt had been committed. At page 426 *Derbyshire, C.J.*, observes :

"It seems to me to be as much a contempt of court to say that the judiciary has lost its independence by reason of something it is alleged to have done out of court, as to say that as a result of a case it has decided it is clear that it has no independence or has lost what it had."

In the *King v. Davies* (1906), 1 K.B.P. 32 at p. 40, *Wills, J.*, quoting from an undelivered judgment of *Wilmot, C.J.*, in *Rex v. Almon* (1765), observed :

“What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders? It will be found to be, not the purpose of protecting either the court as a whole or the individual Judges of the court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired.”

Further on the learned Judge remarked that a considerable part of the undelivered judgment of Wilmot, C.J., was “devoted to shewing that the real offence is the wrong done to the public by weakening the authority and influence of a tribunal which exists for their good alone.”

The suggestion in the editorial comment of the 6th August read with the news item of the 3rd August was that the Chief Justice, at the instance of the Head of the Executive, was interfering with the course of justice in the lower courts inasmuch as the persons asked by the Judge (under orders from the Chief Justice) to contribute money would have no alternative but to comply; otherwise they might incur the disfavour of the Judge to their own detriment. The probable effect of the news item and the editorial comment would be to impair the authority of this Court, to lower its dignity and prestige and seriously to shake public confidence in the administration of justice. The publication of an editorial comment calculated to have this effect is a clear contempt of court and it is unnecessary to quote authority. Mr. Gandhi says that his motive was otherwise; it was “to maintain the reputation of the High Court and the purity of administration of Justice,” *vide* paragraph 9 of his affidavit. The question of motives is irrelevant, what the court has to consider is the effect—or probable effect—of the publication. In Tek Chand’s Law of Contempt of Court the learned commentator at pages 149 and 150 says :

“When the editors forget their duty and commit contempt of court, their motives, however laudable, cannot save them from conviction. It may be that the court, taking a lenient view of their offence, may discharge them with an admonition or consider justice

vindicated after an unconditional apology has been submitted, but the stigma of conviction for contempt remains indelible."

Further on the learned commentator says :

"Motive of the contemner cannot be considered in determining his guilt, it may, however, be a proper criterion for awarding punishment." With these observations we agree.

In the present case the contempt has been committed by all three respondents. Mr. Singhal sent information which was probably founded either on his own inference from what took place in court or on a suggestion from other persons and he has endeavoured to defend his action by giving evidence which we are unable to accept as true. As regards the editorial staff, we are prepared to accept the statement of Mr. Gandhi and Mr. Bharadwaja that up to then they had full confidence in Mr. Singhal and had never had reason to suspect the truth or accuracy of his reports. We, therefore, acquit them of malice towards the Chief Justice. On the other hand, they erred very grievously in publishing the news item and the editorial comment without any attempt to verify the truth or the remarkable utterance by the judge which had been reported to them and without inquiring about the source of their correspondent's information. In their letter of the 10th August they said to Mr. Singhal that they regarded the matter as being of "immense importance" and yet, not withstanding the importance which they attached to the matter, they carelessly published it in their paper without any thought of verification as to the existence of the alleged circular. Their case is not so serious as that of Mr. Singhal because they confidently believed that what he had reported to them was true and they inferred therefrom that a circular must have been issued; and if they had apologized at the outset, we might have been inclined to take a more lenient view of their offence. But they have not tendered any apology to the Court. Mr. Gandhi has in effect admitted his error, has admitted that there was no justification in fact for the editorial comment or for the headlines of the news item and has stated that he is "extremely sorry." This may amount to an expression of regret, but it is certainly not an apology—which is the word used in the Contempt of Courts Act. Mr. Bharadwaja has cited in self-justification the activities of the Chief Justice of

another High Court who, according to him, "has himself been going about raising war funds and speaking on the subject of war efforts," but he nowhere suggests that that Chief Justice ever issued official instructions to the presiding officers of subordinate courts to collect subscriptions from litigants and others appearing before them which is the suggestion made in the news item and the editorial comment in the present proceedings. The analogy, assuming that it would otherwise afford any justification, does not, therefore, in any way assist the editorial staff of the *Hindustan Times*.

We are of opinion that Mr. Singhal must be committed to prison to purge his contempt. We accordingly sentence him to undergo two months' simple imprisonment. We should also have been inclined to deal in the same manner with the editor and with the publisher and printer, but we take into consideration the fact that they were misled by the confidence which they reposed in their reporter. On the other hand, we do not feel justified in awarding a light sentence of fine, for we are satisfied from the evidence that they have manufactured evidence for the purpose of their defence. We accordingly sentence Mr. Devadas Gandhi to pay a fine of one thousand rupees and we sentence Mr. Devi Prasad Sharma to pay a fine of five hundred rupees. If either of them defaults in payment of the fine imposed, he shall undergo one month's simple imprisonment.

The respondents will also have to pay the costs of the Government Advocate at the rate of eighty rupees for each date of hearing.

(Sd.) I. A.,

(Sd.) H. J. C.

14-11-1941.

At the request of Sir Tej Bahadur Sapru, we allow two weeks' time to pay the fines imposed on Devadas Gandhi, the Editor, and Devi Prasad Sharma, the Printer and Publisher, of the *Hindustan Times*.

(Sd.) I. A.,

(Sd.) H. J. C.

14-11-1941.

## CERTIFIED RECORD OF EVIDENCE

*Statement of Mr. Hari Shankar Vidyarthi, Additional Civil and Sessions Judge, Meerut, on S.A.*

TO COURT :—

A copy of the affidavit of Mr. Devadas Gandhi was supplied to me and I read that affidavit from beginning to end. I have got a copy of the affidavit before me. The allegations contained in paragraph 11 (b) of the affidavit are untrue. I did not use the words that are quoted in that paragraph, nor did I use words to that effect. I, however, asked for subscription for the war fund. I made no reference then to his Excellency the Governor or the Hon'ble the Chief Justice.

*Question :* In what words did you ask for subscription for the war fund?

*Answer :* I asked the pleaders who were present to tell their clients to give something by way of charity if they so desired saying that one of the best forms of charity these days was to help the wounded soldiers or the survivors of those soldiers who had laid down their lives for the sake of others.

By clients I mean the accused persons in the case I had pronounced judgment.

I asked for the subscription after I had pronounced the judgment. I did not pronounce the judgment piecemeal. I pronounced judgment all at once convicting some of the accused and acquitting the rest. On that day Rs. 200 were subscribed immediately in court but that amount was not, as alleged in the affidavit, placed on my table. The money was kept with a pleader Mr. S. C. Gupta. Mr. Surajbal Swami, Advocate, did not say that day that he had collected Rs. 150 from his clients and that he would present the money the next morning. The allegation contained in paragraph 11 (f) is untrue. Mr. K. N. Banerji was not appearing in the criminal case in which I had pronounced judgment that day. I do not remember if Mr. K. N. Banerji was present in court at that time. Mr. Surajbal Swami was appearing for some of the accused and was present in court. Yes, I called Mr. Krishna Swarup Sharma, Advocate, to my chambers. I did take some signed statements from Mr. Krishna Swarup and from some other pleaders who were

engaged in the criminal case. This I did on the 1st of September last. I did not retain those statements. I destroyed them. I thought that perhaps it was not very nice on my part to take signed statements from the pleaders. I told my stenographer, Mohammad Yunus Khan, to tell Mr. Singhal to come and see me in my chambers, if Mohammad Yunus Khan found Mr. Singhal in any court. Mohammad Yunus Khan did go to Mr. Singhal's residence on the 5th of August to call him. Mr. Singhal did not come to see me. Mohammad Yunus told me that he forgot to ask Mr. Singhal in court to come and see me and, therefore, he went to Mr. Singhal's residence. Mohammad Yunus said that Mr. Singhal was not at his residence and, therefore, Mohammad Yunus had left a slip asking him to come and see me in my chambers. Mr. Singhal did not see me in my chambers on the 13th of August. He sent no reply to the slip of Mohammad Yunus Khan. After the slip was not replied no attempt, direct or indirect, was made by me to have an interview with Mr. Singhal. Mr. Singhal met Yunus Khan the same evening in the bazar and Mr. Singhal then told Yunus Khan that he had no time to see me. I never told Mr. Singhal that the news in *Hindustan Times* of the 3rd of August was a faithful reproduction of what had happened in court. I never had any conversation with Mr. Singhal concerning the news. I never told Mr. Akbar Husain, District Judge, in the presence of Mr. K. N. Banerji that I had made the statements now ascribed to me by the news in the *Hindustan Times*. In fact Mr. K. N. Banerji himself denied that I had ever made such a statement in his presence. I told the District Judge that I had collected subscription for the war fund and that I afterwards realized that it was improper on my part to do so and I expressed regret to the District Judge for having raised subscription in court.

#### CROSS-EXAMINATION BY SIR T. B. SAPRU :—

I was trying a criminal case known as the Dhakoli murder case. I do not remember what date I had originally fixed for the delivery of judgment. I do not remember if I had originally fixed 29th of July for the delivery of judgment. I did deliver judgment on the 31st of July. There were in all 20 accused in the case and all the 20 accused were present in court at the time of delivery of judgment. There were several pleaders appearing for the

accused and one of them was Mr. Swami. I read out the operative part of the judgment in open court. I sentenced four of the accused to transportation for life. At the same time and in the same breath I passed the order acquitting the rest of the accused. After the operative part of the judgment had been pronounced I told the pleaders for the accused to raise subscription. All the 20 accused were present in court when I asked the pleaders to raise subscription. Out of the 20 accused 15 were in custody and 5 were on bail. All of the 20 accused were present in court. When I said that the best form of charity was to help the wounded soldiers or their relations no comment was made by any one of the 20 accused to my knowledge. The pleaders consulted the *paikars* of the accused in court-room and said that some of the accused were giving Rs. 200 willingly. Those who were transported for life did not offer to pay anything, nor did I expect them to contribute any amount. A few days before the 31st of July I had also asked for subscription from the pleader in another criminal case and Rs. 50 were subscribed and that money was paid to the Secretary of the War Fund on the same day on which this sum of Rs. 200 was paid. Some money was paid on the next day also. I do not remember the name of the pleader who said on the 31st of July that Rs. 200 are being paid or had been paid or will be paid. I do not remember whether it was Mr. Swami who said this. Mr. Gupta was appearing for the same accused for whom Mr. Swami was appearing. On the 31st of July Rs. 200 were actually collected and the matter had passed beyond the region of promise. I saw the money with my own eyes in the court-room. I do not remember if I saw Mr. K. N. Banerji coming in the court-room at that time. The money was in currency notes. I did not see any pleader counting those notes. I do not remember if Mr. K. N. Banerji counted the notes. I am definite and positive that the notes were not put on my table. If Mr. Banerji states that the money was put on my table then his statement will be untrue. The money was probably put into the hands of Mr. Gupta by the *paikars* who had made the collection. I told Mr. Gupta that he should send the money to the War Secretary. Mr. Gupta told me next day that he had paid the money to the War Secretary. Mr. Gupta did not tell me that he had a receipt for the payment. I don't know whether any receipt was given and, if it



was given, on what date it was given. I do not know whether the receipt was given on or about the 14th of September.

**Question :** Is it a fact that the receipt was to be given after the contempt case was over in the High Court?

**Answer :** I do not know anything about the receipt.

I am not in the habit of reading *Hindustan Times*. I read the *Leader*. My attention was drawn on the evening of the 3rd of August to the news that had appeared in the *Hindustan Times* of that date. That news was from a correspondent of Meerut. I read that item of news on the 4th of August. On reading the news I realized straightway that the news had reference to what was alleged to have occurred in the court room about the raising of subscription on the 31st of July. On the 4th and 5th of August either I must have been trying some criminal case or must have been hearing some criminal appeals. I did not see Mr. Singhal in my court room either on the 4th or on the 5th of August. I know Mr. Singhal by sight.

**Question :** When your attention was drawn to this item of news which appeared in the *Hindustan Times* of the 3rd of August as coming from Meerut correspondent did you realize that it might have a bearing on something that you had said in court on the 31st of July?

**Answer :** No I did not imagine that it was attributed to me excepting about the raising of subscription.

From my personal point of view I did not attach any importance to this item of news. The paragraph that appeared in the issue of the *Hindustan Times* of the 5th or the 6th of August was not read by me on those days. It was read by me a few days after when the contempt notice was issued by this court. I read about the contempt notice on the 9th of August. I was not at all disturbed in my mind by the contempt notice. When I read the news in the *Hindustan Times* on the 4th of August then I sent for Mr. Singhal on the 5th of August. When I read the item of news in the *Hindustan Times* on the 4th of August I sent for Mr. Singhal with a view to inquire from him as to what foundation there was for the news that a circular had been issued by the Hon'ble Chief Justice. The word "circular" is in the heading and not in the item of the news. I wanted to tell

Mr. Singhal that no circular had been issued by the Hon'ble the Chief Justice.

*Question :* And probably you would have told Mr. Singhal that day or the next day that quite apart from there being no circular you had not been asked by the Hon'ble the Chief Justice to raise war subscriptions?

*Answer :* If he would have seen me I would have said that apart from any circular letter I was never asked by the Hon'ble the Chief Justice to raise subscription for war. There is no question of fairness to myself. But I was anxious to be fair to the Hon'ble the Chief Justice.

*Question :* And you therefore considered it necessary to call Mr. Singhal to your chambers?

*Answer :* Yes.

When Mr. Singhal did not come I did not take any further steps to call Mr. Singhal to remove that impression.

*Question :* I suggest to you that having realized that Mr. Singhal had been unfair to the Hon'ble the Chief Justice you never said a word to any pleader in your court to convey the message to Mr. Singhal?

*Answer :* No, I did not say anything to anybody.

*Question :* Do you think that you would have been guilty of any impropriety consistent with your anxiety to be fair to the Chief Justice in telling the pleaders who attended your court to convey the message to Mr. Singhal that he had been unfair to the Chief Justice?

*Answer :* No.

I did not bring the matter to the notice of Mr. Akbar Husain.

*Question :* After the 5th of August did you write any letter to the Chief Justice or the Registrar of the High Court that Mr. Singhal had been unfair to the Chief Justice?

*Answer :* I did not write. Everybody knew this fact.

There was no question of my own interest being involved.

**Question :** Did you not consider it necessary in the interest of the reputation of this court and of the Chief Justice that you should officially bring this matter to the notice of the Chief Justice through the Registrar?

**Answer :** I did not, because I knew that the Hon'ble the Chief Justice and the Registrar must themselves have read it.

I do not recognize the handwriting of my stenographer because he has to type my judgments . I think that he writes very seldom a line or two. I must have seen his signature very seldom. I never said to Yunus Khan that I wanted to see Mr. Singhal because I wanted to consult him about any particular matter.

**Question :** I take it that as a judge you are not in the habit of consulting reporters?

**Answer :** No.

Mr. Yunus Khan had no authority on my behalf to say that I wanted to consult Mr. Singhal about a particular matter. The "parlour" must be his own English. I said nothing to Yunus Khan except that I told him that he should ask Mr. Singhal to see me in my chambers. I do not remember to have seen Mr. Singhal in my court room between the 5th and 13th of August. I did not ask either Yunus Khan or any pleader in between these dates to ask Mr. Singhal to see me. On the 5th of August I had asked Yunus Khan to ask Mr. Singhal to see me in my chambers. When I read the comment in the *Hindustan Times* I did not realize that it would lead to some inquiry about my conduct. Even then I did not talk about this matter to Mr. Akbar Husain. I did not meet him until the 1st of September. On the 10th of September I received a copy of the affidavit of Mr. Devadas Gandhi.

**Question :** Up to the 10th of September you did not know what the allegations would be in Mr. Devadas Gandhi's affidavit?

**Answer :** No, not all of them.

I had reason to know about some of the allegations that might be made in the affidavit. I had those reasons on the 1st of September. On that date Mr. Akbar Husain called me to his chambers and said to me that Mr. Banerji had met him 2 days previously and

sation with Mr. Akbar Husain all that I did was to take those written statements. I did nothing else in the matter. Before the Dhakoli case I had seen Mr. Singhal once or twice working as reporter in my court. I knew him by sight but not by name. Once before Mr. Singhal had made incorrect report. It was a criminal appeal. The fact is that there were two persons who were sentenced by the lower court to six months' R.I. under Section 323, I.P.C., and I converted the sentence into fine. It so happened that one of the appellants wanted time to pay the fine and he gave the application to the reader to be put before me for orders. As I was doing other work the reader said that it could not be put up at that time. Then the appellant shouted out very loudly and disturbed my work. It was reported in the *Hindustan Times* that I took that appellant into custody when he complained against my office. As a matter of fact I had not taken that appellant into custody. I did not consider this matter so important as to take any notice of it. But if he had come to see me this time, I would have drawn his attention to this fact also. So far as I remember Mr. Swami did not tell me in court on the 31st July that he had collected Rs. 150 and would present that amount the next day. A sum of Rs. 450 in all was collected from the accused in the Dhakoli case in between the 31st of July and, I think, the 2nd of August. I only paid a formal visit to Mr. Bonarji, Collector, when I was posted to Meerut. Thereafter I did not meet him. I do not know anything about the alleged conversation between Mr. Banerji and Mr. Bonarji. On the 1st of September Mr. Akbar Husain told me that Mr. Banerji had informed him that Mr. Devadas Gandhi had arrived in Meerut. On the 2nd of September Mr. Akbar Husain told me that Mr. Bharadwaja, the assistant editor of the *Hindustan Times*, had also seen him. Mr. Akbar Husain told me that Mr. Bharadwaja had told him that the statement of the pleader had been taken by pressure. I never exercised pressure on any pleader for taking any written statement. Mr. Krishna Swarup and other advocates gave their statements to me of their free-will and accord. As a matter of fact one of them sent his written statement from his house and did not write it in my chambers.

**Question :** You said that you destroyed these statements because you felt that it was improper on your part to have taken those

statements. Would it have become more improper if you would have preserved these statements and shown them to this court?

*Answer :* It was only to correct my impropriety that I destroyed the statements.

I only learnt from the affidavit of Mr. Devadas Gandhi that Mr. Swami resented the coming of his son-in-law in my chambers. As a matter of fact I had called Mr. Swami also to my chambers, but as he was busy he could not come. I never told Mr. Swami after that that I would like to have a written statement from him. I would have attached the same weight to the written statement of Mr. Swami as I did to the written statement of his son-in-law. The son-in-law was present in court when I appealed for charity.

*Question :* Can you suggest any reason why Mr. Singhal sent a false report of what happened in your court room on the 31st July during the trial of the Dhakoli case?

*Answer :* I think it might be due to some misunderstanding based on some conjectures and surmises and once they took up that position, they adhered to the same.

*Question :* What do you mean by 'misunderstanding'? Do you suggest that he misunderstood what was said, or there was any ill-will between you and him?

*Answer :* There was no ill-will between me and him. My impression is that he was not present in court and he acted on some hearsay or rumour.

BY THE COURT :—

*Question :* Was it your own idea or did somebody ask you to raise subscription for the war fund?

*Answer :* I have been doing it as a private citizen out of court myself. The war secretary told me about a week before that I must also do something. I told him that I was doing my very best. Then he said that I should accelerate my efforts.

## CROSS-EXAMINATION BY SIR T. B. SAPRU :—

*Question :* When you read the comments in question in the *Hindustan Times*, did you suggest to any pleader or advocate practising in your court that he might issue a contradiction of the facts alleged in it?

*Answer :* No I did not.

Read and admitted to be correct.

(Sd.) Hari Shankar.  
15-9-'41.

*Hon'ble C.J. and Hon'ble H.J.C.*

Recorded in our presence and under our supervision.

Sd. I. A.  
16-9-'41.

## MR. AKBAR HUSAIN

*Mr. Akbar Husain, District Judge, Meerut, on S.A.*

TO COURT :—

I have read a copy of the Affidavit of Mr. Devadas Gandhi. It was about two or three weeks ago that Mr. K. N. Banerji saw me in connection with this matter. He spoke to me about the matter at a tea party. He said that he wanted to see me at my house about the matter. I told him that it was not necessary for him to do so and that if he had anything of importance to tell me, he could do so in court in my chambers. Then Mr. Banerji came to my chambers. He said that he was worried about this matter, about the collection of subscriptions for the war fund by Mr. Vidyarthi. He said that he was being asked to give evidence of a certain matter by Mr. Devadas Gandhi, the Editor or the Manager of the *Hindustan Times*. He said that the fact was that he had no personal knowledge about the matter. I told him that he had nothing to worry about if he had no personal knowledge about the matter, and he went away. Mr. Vidyarthi also saw me in connection with this matter. So far as I remember, while Mr. Banerji was still in my chambers, Mr. Vidyarthi came to me. I believe I sent for Mr. Vidyarthi. I asked Mr. Vidyarthi about the matter. Mr. Vidyarthi came and said that he wanted to hide nothing. He said that he had made a mistake which he very much regretted and that all that he could say in his defence was that he had acted in absolute good faith. He said that in a murder or similar case, after he had pronounced judgment, he suggested to the pleaders for the accused persons who had been acquitted that they might, as a token of thankfulness, contribute something towards the war fund and that as a result of this suggestion, a sum of Rs. 500 was paid by persons who were acquitted, or similar amount. He said that he felt afterwards that he had acted improperly in attempting to realize subscriptions in that manner and that he was very sorry for it. He said that the allegation that he stated that the Hon'ble High Court or the Government had issued instructions to judicial officers that they should assist in collection of subscriptions was an absolute falsehood. Mr. Banerji had probably already left when Mr. Vidyarthi made this statement. I am certain about this. I had heard vague rumours about the matter even before Mr. Banerji met me

at the tea party but I had no precise knowledge about the matter at all. I never read the offending article or the item of news. Mr. Bharadwaja had an interview with me. He said that he had come to see me because he had been informed on the telephone by his local correspondent, that Mr. Vidyarthi had been using undue influence to get lawyers practising in his court to make a statement to the effect that he had not made the statement which was ascribed to him. I told Mr. Bharadwaja that I could not believe it because Mr. Vidyarthi had already seen me and made what I thought was a very frank and straightforward statement about what happened and that I thought that the local correspondent had been sending him false and mischievous information. Then Mr. Bharadwaja went away.

#### CROSS-EXAMINATION BY SIR T. B. SAPRU :—

The tea party was probably before the 1st of September. It was in connection with the visit of the Inspector-General of the A.-R.P. I believe it was the next morning that Mr. Banerji came and saw me in my chambers. Mr. Banerji was present when I called Mr. Vidyarthi to my chambers. Mr. Banerji stayed there up to a certain point of the conversation and then left the chambers. It is difficult for me to say what it was that Mr. Vidyarthi said so long as Mr. Banerji was there. But I am positive that part of the conversation between Mr. Vidyarthi and me took place in the hearing and presence of Mr. Banerji and the rest took place when Mr. Banerji had left.

*Question :* When Mr. Vidyarthi told you he had made a mistake, did he mean by that that he had mentioned the name of the Chief Justice and the Governor, or did he mean by that he had been raising war subscriptions in court?

*Answer :* I can only say what he actually said, and what he actually said was that the error on his part lay in the fact that he had used the occasion of the acquittal of certain accused persons in a criminal case for realizing subscriptions to the war fund. There was no occasion for him to say that he had instructions from the Governor and the High Court to assist in the collection of subscriptions to the war fund.



**Question :** Did he himself say that the allegation that he had been asked by the Governor or by the Chief Justice was untrue or did you ask him anything about that allegation?

**Answer :** It is difficult for me to say. I have no precise recollection whether it was one way or the other.

I never read the comments in the *Hindustan Times* about this matter. My information was very vague.

**Question :** Had it reached your ears from any source up to the 1st of September that Mr. Vidyarthi was being accused of having mentioned the names of the Chief Justice and the Governor in connection with war funds?

**Answer :** There were vague rumours. It is not possible for me to fix the date when they first came to my notice.

**Question :** I am only anxious to know whether these rumours had reached your ears before this interview between you and Mr. Vidyarthi had taken place on the 1st of September?

**Answer :** Yes. I believe that what Mr. K. N. Banerji told me when he met me at the tea party was that he was being asked by or at the instance of Mr. Devadas Gandhi to say that he heard Mr. Vidyarthi say that he had instructions from the Government and the Hon'ble High Court to assist in the collection of subscriptions to the war fund.

**Question :** And I suppose Mr. Banerji probably conveyed the impression on your mind that he was not present when Mr. Vidyarthi is alleged to have made the statement imputed to him?

**Answer :** Mr. Banerji told me definitely that he was not present when Mr. Vidyarthi is alleged to have made the statement about the alleged instructions from Government and the Hon'ble High Court.

**Question :** Did he tell you anything about Rs. 200 being collected in the court-room on the day when the judgment was being pronounced?

**Answer :** He said that a sum of money was being collected when he went to Mr. Vidyarthi's court-room,

He did not tell me that he had himself counted the notes. He did not tell me that he had himself placed the money on the judge's table. It was from Mr. Bharadwaja that I first learnt that Mr. Vidyarthi had by undue influence taken statements of certain pleaders. I did not refer the matter to Mr. Vidyarthi because I was convinced that the allegation was wholly without foundation of truth. Mr. Vidyarthi had already made a frank and what I thought an honest admission of his error to me and he said that he was also prepared to admit it before the highest authority. There remained thus no occasion for him to attempt to get any one to make any particular statement in writing before him. Mr. Vidyarthi told me that he had taken some written statements from some pleaders. Mr. Vidyarthi said that he had taken the statements and he explained that he had done so because he had to safeguard his interests against what he considered a campaign of vilification which was afoot.

*Question :* Against whom?

*Answer :* I suppose it was against everybody.

*Question :* You had no further interest in the matter?

*Answer :* It is difficult for me to say that I had no further interest in the matter.

Mr. Banerji saw me again after the 1st of September. It is difficult for me to say how many days after the 1st of September he saw me. It was only very recently, only a few days ago that he saw me. He only came to repeat that he had no personal knowledge of the alleged statement which was imputed to Mr. Vidyarthi.

*Question :* Did you ask Mr. Banerji why he should be worried?

*Answer :* I did not ask Mr. Banerji why he should be worried.

*Question :* Did his conversation leave the impression on your mind that he was being pressed by Mr. Devadas Gandhi to make a certain kind of statement?

*Answer* : That was the impression that I had. Mr. Banerji told me that he was being pressed by Mr. Devadas Gandhi to make a particular kind of statement.

*Question* : And that is why he felt worried?

*Answer* : I suppose so.

I know Mr. Surajbal Swami. I had no conversation with Mr. Surajbal Swami about this matter. I would have called Mr. Surajbal Swami and examined him if it were not the fact that Mr. K. N. Banerji told me that no one told him that he had actually heard Mr. Vidyarthi making the statement which was imputed to him.

TO COURT :—

Mr. K. N. Banerji is a young but promising lawyer.

Read and admitted to be correct.

(Sd.) Akbar Husain.  
15-9-41.

*The Hon'ble C. J. and Hon'ble H. J. C.*

This statement has been recorded in our presence and under our supervision.

(Sd.) I. A.  
15-9-'41.

## MR. R. L. SINGHAL

*Statement of Mr. R. L. Singhal, 4, Vaidwara Mohalla, Meerut, on S.A.*

I live at Meerut. I am the local correspondent of the *Hindustan Times*, *Pioneer*, *National Herald*, *Hindusthan Standard* of Calcutta and some vernacular papers. I am also the correspondent of the *Leader*. I send news to the papers sometimes by telegrams and sometimes by letters. In my capacity as correspondent of the papers I sometimes attend courts at Meerut. I know of the Dhakoli murder case that was tried at Meerut by Mr. Vidyarthi. I attended the court of Mr. Vidyarthi on the date that the judgment was delivered in the Dhakoli case. I heard the sentence passed by Mr. Vidyarthi. He did not read out the whole of his judgment. He only pronounced sentence on four of the accused. After pronouncing the sentence on four of the accused he kept silent for a minute or two. He then said: 'Istighase ke mulzimon ko age bulao,' i.e. 'Call the accused against whom the complaints were filed.' Those accused then moved forward. Then there was some side talk between the judge and those accused who had moved forward. I could not follow the side talk. I was unable to understand that conversation; nor did I hear that conversation clearly. Then the judge said:

*'Chunki Chief Justice sahab ne jinse ki His Excellency the Governor ne war efforts men madad deni ki request ki hai ham logon se larai ka chanda ikattha karne ke liye kaha hai, is liye hamara ye farz hai ki hambhi chanda ikattha karen. Ismen aplog hamari madad karen. Chanda mangne par main kisi par kisi kism ka zor nahin deta.'*

That is:

'Since the Chief Justice who has been requested by his Excellency the Governor to help in the war efforts has asked us to raise subscription for the war fund, it is incumbent on us to raise subscription and you should help me in this work.'.....

He further said:

'I am not using any pressure.'

He made these observations facing the lawyers standing there and the accused who had moved forward and some others. Then

consultations followed among the lawyers and some of the persons who had come forward and other persons and then currency notes of Rs. 200 were produced in the court-room. I did not see anybody counting the currency notes. I however heard Mr. Banerji, advocate, saying that he had verified the numbers of the notes. He said "I have seen the numbers of the notes, they are all right." Those notes were then put on the judge's table. I do not remember who put those notes on the table of the judge. I asked the judge to hand me over the judgment so that I might copy out some of the observations contained therein. I made this request to Mr. Vidyarthi after he had pronounced the judgment as regards the remaining 16 accused as well. The judge said the judgment was not ready. The judge inquired from me as to who I was. Before I could answer, Mr. Banerji, advocate, told the judge that I was the correspondent of the *Hindustan Times* and some other papers. After this conversation I left the room. I sent the news to the *Hindustan Times* next day. That was the 1st of August. The news appeared in the issue of the 3rd. I have seen that news item. I have seen the cutting shown to me. It contains the news which I sent. The *Hindustan Times* arrives from Delhi in Meerut on the date it bears. In the issue of the 5th August I read a comment upon the news item which I had sent. I read it in the Delhi edition which arrived at Meerut on the 5th. The paper reaches at about 9-30 a.m.

I know a man called Yunus Khan. He is Mr. Vidyarthi's stenographer. I cannot say whether he ever came to my house. When I returned home on the evening of the 5th August I found at my house the slip which has just been shown to me. I do not know the signature of Yunus Khan. I did not go and see the judge in response to this chit. A man named Gauri Shankar came to me on the 9th or the 10th of August. He wanted me to go and see Mr. Vidyarthi at his house. At first I did not agree, but when he pressed me I agreed to go. I went to Mr. Vidyarthi's house on the 13th of August.

I know a man named Ganga Prasad. He came to me four or five days after I had been to Mr. Vidyarthi's house. He asked me whether I had mentioned the name of Mr. Vidyarthi to the *Hindustan Times*. I told him that I had done so.

When Gauri Shankar and I reached Mr. Vidyarthi's house on the 13th he first of all talked upon general topics. He then referred to the news which had appeared in the *Hindustan Times* of August 3. He then said that it had been nicely and correctly written. He then referred to the comment which had appeared in the issue of 5th August. He said that it too was well written. He then asked me not to disclose his name or mention his court in case an inquiry might be made. I assured him that I would not do so.

*To Court* : Actually I had done so

*To Sir Tej Bahadur Sapru* : I had written a letter to the Editor either on the 11th or the 12th of August disclosing the name of Mr. Vidyarthi. The reason why I told Mr. Vidyarthi on the 13th that I would not disclose his name was that I wanted to avoid discussion on the subject with him. I did not see Mr. Vidyarthi again after the 13th.

I was in the habit of reporting cases from Mr. Vidyarthi's court to the *Hindustan Times*. He had never on any previous occasion called me and found fault with any report which I had sent. The comments which appear on my news items are written in the office of the *Hindustan Times* at Delhi. I have read the comment which appeared in the local edition of the 5th August. I had nothing to do with that comment except that it was probably based on the news item which I had sent. I have never had any complaint from the editor of any of my newspapers that any report sent by me was untrue. I have been connected with the *Hindustan Times* as a correspondent for about eight years.

I am a member of the Civic Guard.

The judgment against the remaining 16 accused in the Dhakoli case was pronounced after the collection of Rs. 200.

*Cross-examination by Sir Wazir Hasan on behalf of Mr. Vidyarthi.*

My work as a correspondent is not confined to reporting cases in court. I do not remember whether I reported any other item of news from Meerut on the 31st July. I do not remember whether I visited other places for the purposes of collecting news that day.

**Question :** Are you prepared to state the general policy of the *Hindustan Times* with regard to war efforts?

**Answer :** I cannot say anything about the policy.

I read *Hindustan Times* as a rule. I could not gather anything about the policy of the *Hindustan Times* by reading that paper. I had on previous occasions reported to the *Hindustan Times* about war efforts by other persons. I am not in a position to state as to when previous to supplying the news in question I had sent news item concerning war efforts to the *Hindustan Times*. Comments were made in the *Hindustan Times* now and then with respect to war efforts.

**Question :** Have you read any other comments of the *Hindustan Times* about war efforts?

**Answer :** I very often read comments but I do not remember if I read any such comment that might show that the policy of the *Hindustan Times* was opposed to war efforts.

I had previously reported news to the *Hindustan Times* about the decisions of Mr. Vidyarthi. I cannot give any details about my other reports. My statement that I went to the house of Mr. Vidyarthi on the 13th of August will be corroborated by Mr. Gauri Shankar. I had conversations with Mr. Vidyarthi in the presence of Mr. Gauri Shankar. I wrote the letter on the 11th or the 12th of August to the Editor of the *Hindustan Times* myself. When I told the judge that I would not disclose his name I told an untruth. I also attend other courts besides the court of Mr. Vidyarthi. When Mr. Vidyarthi pronounced sentence on four of the accused persons and deferred delivering judgment as regards the rest there were present in the court-room Mr. Banerji, Surajbal Swami and others whose names I do not know. I am not in a position to state the names of the pleaders who appeared for one set of the accused or for another set of the accused in the Dhikoli case. Mr. Banerji was not engaged in that case. The judgment was pronounced at about 3-30 in the afternoon in respect of four accused persons. About fifteen minutes after that the judge delivered judgment as regards the remaining 16 accused. I have got no idea as to how the sum of Rs. 200 was raised, i.e. I cannot say how much was contributed by individual persons. When the judge said,

"*Istighase ke mulzimon ko age bulao*" those accused were still in the court. None of the lawyers who were present in court protested against the manner in which the judge was asking for subscription. I did not assist Mr. Devadas Gandhi in making his inquiry when he came to Meerut. I cannot say definitely whether or not he made any inquiry before he received notice from this Court. I did consider the news about the Hon. the Chief Justice being requested by his Excellency the Governor to assist in war efforts as a news of great significance, as it was calculated to give a fillip to war efforts. I had no opinion of my own in the matter of whether fillip to war efforts should or should not be given. I do not receive any fixed salary for reporting. I am paid on column basis. I know Mr. Gauri Shankar for a long time. He is not my friend. He is a public worker in Meerut. He is associated with several organizations, for instance, Prisoners' Aid Society, Congress and Congress Socialist Party and some others. I am not his associate in these activities. I am not a member of these associations. After reporting the news I had a talk with Mr. Banerji concerning this matter on several occasions. In the news item published in the issue of August 3 there is a summary of the judgment in the Dhakoli case. The item of news was supplied by me on the 1st of August. While the case was proceeding in the court of Mr. Vidyarthi I had taken the facts from the committal order and I reproduced the same in the news item that I supplied adding the acquittals and convictions. The final judgment may have been delivered after 4 o'clock but I was still present in court.

*Question :* I suggest that the judgment was pronounced all at once and that it was not pronounced piecemeal?

*Answer :* No, the suggestion is incorrect.

I saw with my own eyes that the currency notes were put on the judge's table, but I cannot say whose hand it was that put the currency notes.

*To Court :*

Barring the head lines and the word 'new' before the words 'Chief Justice,' the whole of the news published in the issue of August 3 is exactly the same as supplied by me,



*Question* : Why did you put the word 'efforts' in the first paragraph of the news in inverted commas?

*Answer* : Because by 'efforts' I meant war efforts.

*Question* : But the words 'war' efforts had immediately preceded the word 'efforts.' Then why were inverted commas necessary?

*Answer* : Because with this 'efforts' I had not put the word 'war,' and I put the inverted commas only to lay stress on the war efforts.

*Question* : Is it or is it not a fact that it has been the confirmed policy of the *Hindustan Times* to oppose war efforts?

*Answer* : I think it is not its confirmed policy to oppose war efforts.

*Question* : Is it a fact that the word 'efforts' was put in inverted commas to emphasize the policy of the *Hindustan Times*?

*Answer* : No, my Lord.

I had supplied this news item to other papers of which I was the correspondent. As far as I know the *Leader* published the first two paragraphs as well as the other news item. The *Pioneer* published the judgment but I am not certain whether it also published the first two paragraphs. The *Leader* published the first two paragraphs. I am not sure about any other paper having published.

*Question* : If what you have stated is true, why did you in the first paragraph use the guarded words 'I reliably learn' and 'it is understood'?

*Answer* : Because in this dispatch I had not mentioned the source of my news.

I probably received a letter from the Editor of the *Hindustan Times* either on the 10th or 11th of August asking me to mention the source of the information on which the news item referred to above was based. I had not till then come to know that notice for contempt had already been issued by this Court. I first came to know about the issue of notice on the 13th when Mr. Vidyarthi told

me about the same. I sent a reply to the letter of the 10th or 11th August forthwith. I did mention in my reply that Mr. Vidyarthi had said all this in open court. I had dispatched that reply before I met Mr. Vidyarthi on the 13th August. Probably I did not receive any letter from the editor, publisher or printer of the *Hindustan Times* after my reply to the letter, dated 10th or 11th August. Mr. Devadas Gandhi after that came to Meerut for the first time on the 31st August. No correspondence passed between me and the editor, printer or publisher in between the 13th and 31st August. I was not informed of the intended visit of Mr. Devadas Gandhi to Meerut. I met Mr. Devadas Gandhi at Meerut at Prof. Dubey's house on the 31st August. He told me that he had come to make enquiries about the matter.

*Question :* Had he reasons to suspect the veracity of the information contained in the reply sent by you?

*Answer :* I cannot say anything about it.

*Question :* Then why he needed verification of the information supplied by you?

*Answer :* This question too I cannot answer.

*Question :* Did you attempt an answer to that question?

*Answer :* Yes, I attempted to answer the question but I failed.

Probably Mr. Gandhi left Meerut on the evening of the 31st.

*Question :* Did Mr. Gandhi revisit Meerut?

*Answer :* If he visited it is not within my knowledge. I did not meet him after the 31st August.

*Question :* What steps did Mr. Gandhi take on the 31st August to verify the information supplied by you?

*Answer :* In the evening Mr. Banerji told me that he had met Mr. Gandhi at Prof. Dubey's house. Mr. Devadas Gandhi did not tell me about the steps he was taking to verify the information given by me.

*Question :* Was the sole object of Mr. Devadas Gandhi to verify the truth of the information given by you?

*Answer :* He told me so.

*Question :* Did you then question him why did he doubt the veracity of your statement?

*Answer :* I did not put any question to him.

*Question :* Did Mr. Devadas Gandhi on the 31st August enquire from you as to what evidence will be available to support your statement?

*Answer :* He did not enquire from me on that day but on the 11th or 12th of August when I had sent a reply to him I had mentioned therein the lawyers that were present there.

*Question :* Was any attempt made by you or any other person connected with the *Hindustan Times* in between the 11th of August and till this date to get into touch with persons who might possibly figure as witnesses in these proceedings?

*Answer :* No attempt was made by me nor do I know of any attempt by any other person.

I received the slip of Yunus Khan on the 5th of August. The slip requested me to meet Mr. Vidyarthi. By the word parlour in the slip I understood private *baithak*. I did not comply with the request contained in the slip.

*Question :* Why did you hesitate to comply with that request?

*Answer :* Firstly, I was very busy with the starting of the Civic Guard and the A.-R.P. Club in Meerut and, secondly, I wanted to avoid him.

*Question :* Why did you want to avoid the judge?

*Answer :* There was no particular reason for it. I cannot suggest any reason for avoiding to meet the judge except that I was very busy in those days.

*Question :* Is it a fact that the avoidance was due to a guilty conscience?

*Answer :* No, my lords.

It was the first time that on the 13th August I visited Mr.

Vidyarthi at his residence. Except Mr. Vidyarthi and Gauri Shankar, no one else was present at the interview. I met Mr. Vidyarthi on the 13th at about 7-30 a.m. Mr. Vidyarthi informed me about the issue of notice by this Court after I had assured him that I would not disclose his name. He told me about the notice when we were leaving his house.

*Question :* Did you not then think it prudent to tell him that as the matter had reached that stage it was impossible for you to hold out a promise not to disclose Mr. Vidyarthi's name?

*Answer :* I had already disclosed his name to the *Hindustan Times* and I did not say anything to him then.

*Question :* Did you attach any importance to the slip of Yunus Khan?

*Answer :* I thought that he was calling me in connection with the comment that had appeared that morning.

*Question :* Why did you preserve that slip?

*Answer :* It simply remained in my possession.

*Question :* When you sent the news item which was published on the 3rd August did you realize that your note would create public feeling against the judge or against the Chief Justice of this Court?

*Answer :* No, I did not.

*Question :* It was not on that account that you were reluctant to meet Mr. Vidyarthi?

*Answer :* Not on that account.

*Question :* Read the first paragraph in the news of August 3 and state whether that paragraph does or does not disclose utter hostility to war efforts.

*Answer :* It does not.

*In answer to Sir Tej Bahadur Sapru—*

The letter dated 10th August, 1941, that has just been shown to me was written by me and is signed by me (the letter is put on the record).

*In answer to Sir Wazir Hasan—*

So far as I remember I did not meet Mr. Devadas Gandhi between the 10th and the 31st August nor had I any talk with him about the matter in dispute in between those dates.

Read and admitted to be correct.

Sd/. R. L. Singhal.

25/9/41.

This statement has been recorded in our presence and under our supervision.

25/9/1941.

Sd/. I. A.,  
Sd/. H. J. C.

## MR. GAURI SHANKAR

[UNOFFICIAL ENGLISH TRANSLATION OF MR. GAURI  
SHANKAR'S EVIDENCE RECORDED IN URDU]

*Deposition of Gauri Shankar on S.A. :—*

Father's name : Mathura Pershad ; caste : nil ; age : 53 ; resident of Meerut. Dated September 25, 1941.

EXAMINED BY SIR TEJ BAHADUR SAPRU :—

I live in Meerut. I participate in public activities and am working as the manager of the Free Maternity Home, an institution founded by my wife where she works along with several midwives. The Maternity Home charges no fees but accepts voluntary contributions. I have been acquainted with Mr. Radhe Lal Singhal for a long time. I know Mr. Vidyarthi, Sessions Judge, since the institution of this case ; I did not know him before that. I know Babu Ganga Prasad, a resident of Meerut. He came to my house and told me : "Mr. Vidyarthi wants to see Mr. Radhe Lal Singhal, and it will be very kind of you if you can arrange the meeting." I think this was about August 5 or 6. I promised to see Mr. Radhe Lal Singhal and tell him about his (Babu Ganga Prasad's) mission that Mr. Vidyarthi would like to see Mr. Singhal. I told this to Mr. Radhe Lal Singhal. He said that owing to some Civic Guard function he would not be able to see Mr. Vidyarthi on the next day, but asked me to tell him (Babu Ganga Prasad) that he would do so the day following. On the third day we went to Mr. Vidyarthi's house on cycles. I introduced Mr. Singhal to Mr. Vidyarthi. Mr. Vidyarthi said to Mr. Singhal, "The news item which you sent to your paper is well written and correct. You have a good command over the English language." He also said : "Who wants to collect subscriptions ! But under compulsion subscriptions have to be collected." After that he asked Mr. Singhal that if the editor of the *Hindustan Times* made any inquiries from him, Mr. Singhal should consult him and should avoid disclosing his name as well as the name of his court. Mr. Singhal replied that hitherto he was not called upon to furnish any details, but in case of demand he would show his report to the judge before he sent it. When we were about to depart Mr. Vidyarthi told

us that the High Court had served a notice for contempt of court on the *Hindustan Times*. Immediately after that we left him.

### CROSS-EXAMINED BY SIR WAZIR HASAN :—

When Mr. Ganga Prasad first came to me he took me to Mr. Vidyarthi and I was introduced to him. I cannot say why Mr. Ganga Prasad took me to Mr. Vidyarthi, whom I had not met previously. He introduced me as a public worker and that my wife was running the Free Maternity Home. In addition Mr. Ganga Prasad told the Judge that he and my wife had resigned from the Municipal Committee according to the Congress mandate. My wife and I are both members of the Congress. After the introduction, Mr. Vidyarthi expressed a desire to meet Mr. Singhal. I interpreted it to mean that Mr. Vidyarthi thought that Mr. Singhal and I were so much acquainted with each other that Mr. Singhal would see him (Vidyarthi) if I asked him to do so. Mr. Vidyarthi had not told me that I should accompany Mr. Singhal when the latter would come to see him. I was an accused in the Meerut Conspiracy Case and was sentenced to three years' imprisonment, but was acquitted by the High Court. Recently, I was convicted to four months' imprisonment under the Defence of India Rules.

**Question :** What are your means of livelihood?

**Answer :** I get Rs. 50 per month from the Free Maternity Home. I have no other income.

I have not related Mr. Singhal's meeting with the Judge to anybody ever before. I had no meeting with Mr. Gandhi in this connection. I had no serious talk about this case with Mr. Singhal, except that he was asked to meet Mr. Vidyarthi. Mr. Singhal and I are not associated in any public activities. He is a reporter. When I went to the Judge's house I was against all war effort, but I have been silent since the invasion of Russia. Before the involvement of Russia in the war, the Congress was against all kinds of war effort. I know English sufficiently well to read and understand the *Hindustan Times*. I read the news item which is the basis of the present proceedings in the columns of the *Hindustan Times* the same day. I did not read the editorial comment on the day of its appearance, but later on. When Ganga

Prasad came to me he said that the *Hindustan Times* had published a news item about collections for the War Fund and a comment had also appeared on it. I read the comment then. I never inquired of Mr. Singhal about the source of the news which appeared on August 3, nor did he tell me about that. Mr. Ganga Prasad had told me that Mr. Vidyarthi wanted to see Mr. Singhal about the news published in the *Hindustan Times* about the collections for the War Fund.

BY THE COURT :—

I read local papers besides the *Hindustan Times*.

Babu Ganga Prasad and Mr. Singhal are known to me.

*Question :* Did you suggest it to Babu Ganga Prasad to see Singhal himself?

*Answer :* No, I did not.

Neither did I ask Ganga Prasad to see Singhal directly nor did he tell me to persuade Mr. Singhal to go to Vidyarthi. At the time of our departure from Mr. Vidyarthi's house, when he had disclosed that contempt of court notice had been issued against the *Hindustan Times*, neither I nor Mr. Singhal pointed out to Mr. Vidyarthi that in the circumstances it would be difficult to conceal his or his court's name. There was no talk about the notice after we came out of Mr. Vidyarthi's house. I went away to Sadar and Mr. Singhal went home. Later on I did not converse with Singhal about the notice. Babu Ganga Prasad came to me once more to find out whether the *Hindustan Times* had made some inquiries and what was Mr. Singhal's reply to them and requested me to get for him from Mr. Singhal the particulars of any inquiries that might have been made from him by the *Hindustan Times* and his replies thereto. Subsequently, I went to Mr. Radhe Lal Singhal who told me to tell Mr. Ganga Prasad himself to see Mr. Singhal. Accordingly I conveyed the message to Babu Ganga Prasad.

I did not meet Mr. Devadas Gandhi in Meerut. I know Prof. Dubey. So far as I know he is not a member of the Congress. Prof. Dubey told me that he and Mr. Bharadwaja had come to my place, but could not meet me. Prof. Dubey said that he



wanted to make inquiries from me about the subject of the comment in the paper. The Judge did not call me after August 13.

RE-EXAMINED BY SIR TEJ BAHADUR SAPRU :—

The Russo-German war had started before August. I am a socialist and like the Soviet system of government.

*To Court Question* : I am a communist.

Read and admitted to be correct.

(Signature in Urdu) Gauri Shankar.

This statement has been recorded in our presence and under our supervision.

Sd. I.A.

25-9-'41.

Sd. H.J.C.

## MR. DEVADAS GANDHI

*Mr. Devadas Gandhi on S.A.*

My name is Devadas Gandhi, father's name Mohandas Gandhi, age 40 years, residence Delhi, occupation Editor.

*Statement*

TO SIR TEJ BAHADUR SAPRU :—

The *Hindustan Times* is a daily newspaper and is issued from Delhi. It is owned by a registered company. I am its Editor. Mr. Bharadwaja is one of the assistant editors and Mr. Subramanyan is the joint editor. We maintain a certain number of correspondents in different parts of the country. Among them, there is a correspondent at Meerut. That correspondent is Mr. Singhal. He has been my correspondent for the last seven or eight years. The staff is quite big but there is a particular department in the editorial staff which deals with the news sent in by correspondents. It is invariably edited before it is printed.

*Question :* Explain to the Court what exactly you mean by the words "editing of the news."

*Answer :* The person concerned would normally first decide whether he is going to publish it. He would then examine the language and put it right both in respect of its English as well as in respect of the policy of the paper. He would then give it suitable headlines which always reflect the views or efficiency of the particular person giving these headlines. The news in this particular case did as a matter of fact go to the editorial staff.

When this news arrived in our office it was edited in the usual manner by some member of the staff. The news having appeared in the issue of the 3rd, some one wrote the comment in the issue of the 5th August. When this news was received in our office, I had no reason to suspect the honesty or veracity of the correspondent. In regard to the allegations made in paragraph 13 of my affidavit I cannot say for certain off-hand whether we printed any such complaints, but I know that in our editorial columns we have drawn attention to such complaints off and on. We drew the attention both of the public and of Government to these complaints, but mainly of the Government. With regard to the war subscriptions

as well as the war efforts the *Hindustan Times* has done a lot to help the war effort and will continue to do so, if I may say so. But it is the policy of the paper to uphold voluntary war effort and to criticize and if possible expose such war effort as may be carried on under pressure. My paper has not hesitated to criticize any war effort which has been carried on under pressure. My paper is not regarded in the country as officially or directly connected with the Congress, but it has obvious Congress leanings, and a good deal of sympathy for the Congress. As I can see it, the Congress policy is to oppose war effort which is carried on under pressure and to advocate a policy of allowing such men and women as do not see eye to eye with the British Government's policy in this country to exercise freedom of expression and to function virtually as neutrals. I, however, have no official capacity entitling me to epitomise the policy of the Congress. Largely the policy of the Congress is at present dictated by my father, Mahatma Gandhi. I believe that his advice to Congressmen at present is that they should hold aloof from war efforts. He has not advised the Congressmen to interfere with war efforts of the Government. On the contrary he has expressed himself, I believe, more than once to the effect that Congressmen should take no active part this way or that in relation to the war effort but should exercise freedom of expression. He has based his advice to the Congress largely on his belief in non-violence.

As a newspaper we are in a peculiarly favourable position for receiving communications from members of the public and a good part of the communications we have been receiving since the commencement of the war has related to pressure supposed to have been exerted on people in the matter of the war effort. I do recollect speeches made by very responsible members of Government repudiating all suggestion that any compulsion is exercised in this country in regard to the war effort.

I believe the writ from this court was issued on the 8th of August and my correspondent in Allahabad sent me a telegram to that effect the same day. It was not published until the issue of the 14th August. The reason was that I preferred to await the receipt of the writ which I was told was on its way. It was, however, published on the 14th, although I did not receive the

writ because it had already appeared in the *Leader*. I think the notice issued by this Court was served on the 25th of August. After the receipt of that telegram we wrote to Mr. Singhal to make inquiry. The paper shown to me is the office copy of the letter which we wrote. It is dated the 9th of August. I have got it with me and I am producing the same in the court. The letter of the 10th of August which has already been produced is Mr. Singhal's reply to that letter. The letter of the 10th of August is addressed to Mr. Subramanyan, Joint Editor of the *Hindustan Times*.

*Question* : Did you after the receipt of this letter on the 11th of August make any further enquiry up to the 25th of August?

*Answer* : I still preferred to await the formal orders of the High Court and the only serious enquiries that I made were after the receipt of the writ of service from the Court.

After the receipt of the writ I went to Meerut on the 31st of August. Mr. Bharadwaja, the Assistant Editor, accompanied me to Meerut. I reached Meerut at about 9 o'clock in the morning. Having reached Meerut we proceeded to the residence of Prof. Dubey. I had not met him before. I went to Prof. Dubey because he happened to be known to Mr. Bharadwaja. My information is that Prof. Dubey is not and has never been a Congressman.

*Question* : Is it a fact that Mr. Dubey is a public critic of the Congress?

*Answer* : I have not enquired into that aspect of his views. I saw Prof. Dubey at his house. He is to appear as a witness for me in this court.

*Question* : What did you ask Mr. Dubey to do for you?

*Answer* : My first inquiry was whether he knew R. L. Singhal and whether he could tell me something about him from his personal knowledge. Prof. Dubey asked me what was the nature of my mission and I briefly told him. He then informed me that R. L. Singhal was known to him as a very upright, active and conscientious journalist known to and popular among all circles.

*Question :* Did you have any talk with him about Mr. Banerji, Advocate?

*Answer :* I then placed myself in Prof. Dubey's hands and requested him to give me what help he could in connection with the case and in particular to help me to satisfy myself that R. L. Singhal in sending me the news was acting properly and truthfully.

*Question :* Then what did he say?

*Answer :* I mentioned to Prof. Dubey my information that Mr. Banerji and Mr. Surajbal Swami were present in the court when the particular incident took place and I asked Prof. Dubey if he could facilitate my meeting these gentlemen in order that I may be able to make further verification of the information supplied by R. L. Singhal. Prof. Dubey then went to see Mr. Banerji and returned a short while after and told me that Mr. Banerji corroborated in every detail the information I had received from R. L. Singhal in the letter dated 10th August that has been produced but added that he had requested Mr. Banerji to meet me personally that afternoon and relate the facts to me himself.

*Question :* Then did Mr. Banerji come in the afternoon at Prof. Dubey's house?

*Answer :* Mr. Banerji arrived according to the appointment at tea time at 4 p.m. when Prof. Dubey was kind enough to serve tea.

*Question :* Then what happened?

*Answer :* I asked Mr. Banerji if it was a fact that he was present in the court of Mr. Vidyarthi on the 31st of July when he pronounced the judgment in the Dhakoli murder case. Mr. Banerji told me that he was present and I requested him with reference to the case that was pending and which was common knowledge if he would be good enough to relate the facts to me as he knew them in order to enable me to check Mr. Singhal's information. Mr. Banerji then said that he was not only present but that the whole of the incident that had taken place was the talk of the town in Meerut. But I wished to be specific and requested him to give

me a first-hand account. He then went on to tell me that while delivering judgment in the case Mr. Vidyarthi made precisely the statement that I had been informed he had made. I then requested him to be good enough to repeat the language used by Mr. Vidyarthi as I was very anxious that there should be no misunderstanding. He then repeated word for word the language which I have quoted in my affidavit. I then told him that it would help me in my case if he could file an affidavit along with me. He said he did not think that an affidavit was necessary. I then asked him if he could relate those facts in a letter in order to help me in my defence. His reply was that if I meant that he should write a letter to me starting with the words "Apropos of your enquiry the following are the facts known to me" he would consider my request but that he would give me his final answer later on. But he added that in any event I could rely on his help to speak the whole of the truth in the court if summoned by the High Court. This happened in the presence of Prof. Dubey and Mr. Bharadwaja, Assistant Editor of the *Hindustan Times*. Mr. Swami was not present. I have not yet seen Mr. Swami. Mr. Bharadwaja has seen Mr. Swami. The conversation ended at about 4-30 p.m. I left Mr. Bharadwaja behind and returned to Delhi that night. I caught the train that leaves Meerut at about 8 o'clock. Between 4-30 and 8 o'clock I made no further enquiry in the matter apart from my conversation with Prof. Dubey. Mr. Bharadwaja returned to Delhi next evening, that is the 1st September.

**Question :** When Mr. Bharadwaja reached Delhi, did he report as to what happened between him and other persons including Mr. Akbar Husain?

**Answer :** Mr. Bharadwaja gave me a report—a lengthy report—of his enquiries which included the conversation he had had with Mr. Swami and again with Mr. Banerji. He gave me the fullest account.

**Question :** Between the 1st of September and the 9th of September when you appeared in this court, did you go to Meerut at all?

**Answer :** No. My next visit was three or four days ago.

*Question* : Why did you go to Meerut a second time?

*Answer* : That was in connection with preparations of the case and in particular to meet Mr. Gopi Nath Sinha, Advocate, who is now here assisting the leading counsel.

*Question* : What help did you want Mr. Gopi Nath Sinha to give you?

*Answer* : I knew Mr. Gopi Nath Sinha by name and fame as a leading lawyer and I expected that I would have to answer certain enquiries either from counsel or from the court in which the advice and help of Mr. Gopi Nath Sinha might be of assistance to me.

*Question* : Did you ask for the collection of any evidence?

*Answer* : I do not think so.

*Question* : About the time that you received this news had you from any quarter received complaints that judicial officers were taking undue interest in the matter of collection of subscriptions?

*Answer* : I have, as a matter of fact, heard numerous complaints of subordinate judicial officers both in the United Provinces and the Punjab making efforts to collect subscription to the war fund in a manner which I would not consider appropriate.

It was the sub-editor concerned who had the headlines inserted over the news item of the 3rd August, but the legal responsibility is of mine.

The news, as it appears, purely from the point of view of a sub-editor, lends itself to the possible interpretation but not a definite interpretation that it may be based on the existence of a circular and that is why there is a question mark after the word "Circular."

*Question* : In the news item the word "efforts" in the third line is in inverted commas. Were these inverted commas put down there by the correspondent or by somebody in your office and, if so, with what object?

*Answer* : I cannot answer that without making further enquiries as to how the inverted commas came to appear.

## CROSS-EXAMINED BY SIR WAZIR HASAN :—

The news was published on the 3rd of August without any further enquiry beyond the letter or telegram of the 31st July.

*Question :* You have stated that a possible interpretation of the headline over the news item, that is to say, "judicial officers for war work and new Chief Justice's circular," may amount to a statement of fact that the Chief Justice had issued such a circular. Did you consider it prudent and indeed necessary or not that before that was allowed to go into print, you should make some enquiries about its truth or otherwise?

*Answer :* Work in a newspaper office, more particularly in the office of a daily newspaper, is carried on under conditions of great stress and strain. Nevertheless my newspaper office, as I believe all newspaper offices, maintain a list of their correspondents and a list of those on whom the fullest reliance can be placed and another list of those whose news must be checked. Mr. Singhal in my office belongs to the first list and had it not come from him (and only a few others enjoy his reputation) it would not have been published without further enquiry.

It was only because of the issue of the notice that I started an enquiry into the matter, otherwise I would not have launched an enquiry immediately.

*Question :* And were you of the view that you will not be guilty of the offence of contempt of court if you were able to establish that the Judge uttered those words which were attributed to him?

*Answer :* In the first place, I was anxious to convince myself that the Judge had uttered those words. I made every effort that it was humanly possible to make to convince myself that the Judge had uttered those words and it was only when I was morally convinced to the bottom of my heart that he had uttered those words that I felt, subject to legal advice, that it was my public duty to bring those facts to the attention of this Hon'ble Court regardless of its bearing on the case against me. As a layman I did take the view that if the facts could be established, that would be complete justification for my conduct and that I



would be absolved of the charge of contempt.

*Question* : May I take it that till your first visit on the 31st August to Meerut you had not taken legal advice in this behalf?

*Answer* : I believe I was in consultation with lawyers, but as a matter of fact I took no serious action until I had received the writ from the Court which arrived on the 25th of August. I went to Meerut on the 31st of August and was then certainly in touch with lawyers.

*Question* : Do you wish to suggest that the news which your paper published and the comments of August 5 were not serious enough *per se* so as to justify a further enquiry on your part in the truth or otherwise of the item of news or they only became serious as a part of your defence to the charge of contempt?

*Answer* : The news was published very reluctantly but in the background of the complaints which we had been receiving and in view of the fact that the news came from a reliable correspondent, it was not possible to disbelieve it and serious though it was, it was published and it is the function of a newspaper to give publicity to all kinds of news including serious news, if necessary.

*Question* : In the paragraph that appeared in the issue of August 5 you say "If it is true," may I take it that till then you entertained doubt about accuracy of the report that you had received?

*Answer* : As a matter of fact we were convinced of the truth of the news, but it was not our desire that the vast reading public of our paper should at the same time regard it as gospel truth since it obviously was a serious matter and hence the use of word 'if.'

I believe the paragraph was written from a desire to be fair to the Hon. The Chief Justice. I did not desire that the public should take it as gospel truth.

*Question* : And you wanted the impression to be made on the mind of the public that the matter was still a matter of doubt?

*Answer :* I would not go so far.

I was definitely led to believe that a circular or instructions in any other form did exist. I entertained this belief on the basis of the news that I received from Meerut and which is published in the issue of August 3.

*Question :* So far as the news item itself is concerned it makes no reference to any circular?

*Answer :* That is true.

The reason why I did not go direct to Mr. Vidyarthi to make an enquiry into the matter was—"My name, my dress and my profession are such that I am regarded as a red rag in several quarters and it is with the utmost reluctance that I would approach such quarters for a personal interview."

I was not quite sure that it would be legally appropriate to approach Mr. Vidyarthi through some other person.

I do not think that Mr. Banerji is a Congressman.

In letters I wrote to friends I mentioned the conversation I had with Mr. Banerji. I write no memorandum for my own use and I use the letters which I write to my special friends for this purpose. I keep a diary of sorts. I did not note this interview in any diary nor the substance of it.

BY THE COURT :—

*Question :* Are you now satisfied that the imputation cast on the Chief Justice by the news published in the issue of August 3 was wholly unjustifiable?

*Answer .* I was so satisfied on the very first day of the hearing of this case in this court.

*Question :* Are you now satisfied that what was attributed by the news item to his Excellency the Governor was wholly untrue?

*Answer :* Nothing has been said on that point, My Lord, but I am prepared to accept it as your Lordship puts it.

*Question* : Then do you admit that by the news item a grievous wrong has been done to his Excellency the Governor and the Chief Justice of the province?

*Answer* : I can only say, My Lord, that I regard the whole affair as most unfortunate.

*Question* : Do you consider your paper a responsible paper?

*Answer* : I do.

*Question* : And yourself a responsible editor?

*Answer* : Yes.

*Question* : Do you now appreciate the grievous wrong that you have done by publishing the news item and the paragraph in the editorial column?

*Answer* : I think in the circumstances it was unfortunate that it was published, but I do not see how, again in the circumstances, it could have been avoided.

*Question* : Did it ever strike you that the exalted office of the Governor and of the Chief Justice demanded extreme caution on your part?

*Answer* : My Lord, had it had reference to any thing but the war effort, I would have exercised ten times the caution that I actually did in this case. My paper has no animus against your Lordship and although it strongly criticises his Excellency the Governor it would have no interest in starting a canard of this kind. But unfortunately it is the belief of my paper that many things are taking place in this country under the stress of the war which would not otherwise take place and it was my frank belief that in view of the extraordinary circumstances of the war even his Excellency the Governor and even your Lordship might conceivably be drawn into action which, according to one section of opinion, might be considered appropriate but entirely inappropriate according to another section of opinion.

*Question* : Did the belief that the Governor or the Chief Justice might have resorted to a certain course of conduct, in your opinion, furnish a justification for giving publicity to the news of the description that you did on August 3?

*Answer* : My Lord, the question of "might" would arise in that sense if I had been concocting a piece of news, but what I am trying to state is that when the news came to me in the manner it did, I shrugged my shoulders and said, perhaps the war has made it possible.

*Question* : Do you now realize that the mention about a circular in the headlines was wholly unjustified?

*Answer* : I am prepared to agree to that, My Lord.

*Question* : Did you appreciate this fact on the first date of hearing in this court?

*Answer* : I did.

*Question* : Did you consider it proper then to make amends for the wrong done by you?

*Answer* : The question of personal amends to your Lordship has been engaging the attention of myself and my distinguished counsel.

*Question* : It is not the question of making personal amends to the Chief Justice personally, but it is the question of making amends to the Exalted Office of the Chief Justice. Has that engaged your attention so far?

*Answer* : It has, My Lord.

*Question* : The weeks that have intervened have not enabled you to arrive at a decision in the matter?

*Answer* : My Lord, if any thing short of the evidence that has been placed before this Hon'ble Court had come to my attention I would have made the fullest amends long ago.

*Question* : You realized from the very outset that the existence of the circular was a matter of cardinal importance in the case?

*Answer* : I did not take that view.

*Question* : Then why did you in the letter dated the 9th of August exhibit extreme anxiety about the production of the circular or a copy thereof?

*Answer* : This letter is dated the 9th of August. As I have already stated, I could not make out all the details of the charge against me until I had received the writ which arrived on the 25th and I think it would be granted that it was natural on my part to proceed in the case, legally speaking as well as morally, as though a circular did exist.

*Question* : You have talked about your "public duty" in the course of your evidence. Does it occur to you that it was equally your public duty not to be disrespectful to the office of the Chief Justice?

*Answer* : Entirely, My Lord.

*Question* : Do you realize now that the disrespect has been done to that office?

*Answer* : I realize that I have been an unwitting instrument in showing disrespect for which I am extremely sorry.

*Question* : And the cause of the whole trouble is Mr. Singhal?

*Answer* : My Lord, that is a point on which I would strive to establish his innocence to the end of my existence.

*To Sir Tej Bahadur Sapru* : The office copy of the letter dated the 9th of August bears the initial of Mr. Subramanyan, who is the Joint Editor, and he wrote that letter.

Sd. Devadas Gandhi.

Read and admitted to be correct.

D/25-9-41.

Recorded under the supervision of the court.

D/25-9-41.

*Hon'bles C.J. and H.J.C., J.*

This statement has been recorded in our presence and under our supervision.

25-9-41.

*Mr. Devadas Gandhi—recalled—26-9-'41.*

TO COURT :—

*Question :* Have you any objection in disclosing the name of the author of the paragraph in the editorial column?

*Answer :* My Lord, I cannot answer the question in "Yes" or "No" I propose to answer in two or three sentences. My Lord, I was privileged to be present here during your examination of Mr. Bharadwaja. My attitude in this case has been one of laying every card on the table, but if I may be permitted to say so, certain words fell from your Lordship a few moments ago which struck me as constituting a threat of action against other members of my staff in addition to myself and Mr. Singhal. Under the circumstances I desire to state that, unless compelled under law, I shall not disclose any further names of any member of my staff and I desire further to declare that I invite on my head the cumulative punishment that this court may desire to inflict on all the members of my staff.

Sd. Devadas Gandhi.

Read and admitted to be correct.

*Hon'bles C.J. and H.J.C., J.*

This statement has been recorded in our presence and under our supervision.

26-9-'41.

## MR. D. D. BHARADWAJA

*Statement of Mr. D. D. Bharadwaja, Assistant Editor, Hindustan Times, Delhi, on oath :—*

I am an assistant editor of the *Hindustan Times*. I have been connected with this paper for the last three years. As an assistant editor I deal with the news that is received from mofussil correspondents and write editorials. I remember that a news item relating to the incident under enquiry appeared in the issue of the *Hindustan Times* dated 3rd of August. The news passed through my hands when it was received in the office. I myself gave the headlines. The reason why I put a question mark after "The new Chief Justice's Circular" is that the word "Circular" was not mentioned in the news item; it was merely an inference from the text of the message. After this some comments appeared in the *Hindustan Times* of the 5th August. I know that a telegram was received in our office on the 8th August informing us that some steps were being taken by this court against us in respect of that comment. After the 8th August we wrote a letter to Mr. Singhal and we received a reply from him. Our letter is dated 9th and his letter is dated the 10th August. The letter of the 10th must have reached our office on the 11th. I think it was in the issue of the 14th August that we published the information of the fact that a writ for contempt had been issued against us by this court. Between the 11th and the 25th August we did not communicate with any of our correspondents in respect of this matter. We only wrote to our legal correspondent at Allahabad that he should send us full text of the affidavit and of the court's order as early as possible.

The writ was served on the 25th August. Mr. Devadas Gandhi and I went to Meerut on the 31st August and arrived at Meerut at about 10 a.m. We went to Prof. Dubey's house. I have known him for about 20 years. He and I were contemporaries at the Agra College. Our correspondent had told us that some lawyers had been present in the Judge's court when the incident took place and we asked Prof. Dubey if he could take us to those lawyers or arrange a meeting between us and them. Prof. Dubey went to Mr. Banerji's house. On his return he told us that Mr. Banerji had narrated to him what had taken place in his presence. Prof. Dubey invited Mr. Banerji to come and have tea with him that very day in order that he might meet us and he came. Mr.

Banerji admitted to us in the presence of Prof. Dubey that he was present in court when the incident occurred. Mr. Devadas Gandhi left Meerut for Delhi that evening by, I think, 7 p.m. train. Mr. Devadas Gandhi and I did not meet Mr. Swami, Advocate, that day. I stayed on for a day and a half after Mr. Gandhi had left. I left for Delhi on the 2nd. In the afternoon of the 1st of September I met Mr. K. N. Banerji again and had some talk with him about the incident in court. Mr. Surajbal Swami arrived while Mr. Banerji was still with Prof. Dubey and myself. This meeting took place at Prof. Dubey's house. Mr. Swami complained to me that Mr. Vidyarthi had called his son-in-law, Mr. Krishna Swarup Sharma, to his chambers where he talked to him for about fifty minutes and obtained from him a written statement saying that the Judge, Mr. Vidyarthi, had not made the statement attributed to him. I met Mr. Akbar Husain next morning, that is, the 2nd of September at 8-45 at his house. I went to Mr. Akbar Husain in order to bring to his notice the fact that Mr. Vidyarthi was taking statements of this sort from lawyers by exercising pressure.

*Continued on 26-9-1941.*

Mr. Akbar Husain said that he had no knowledge of what I said and that Mr. Vidyarthi was the best person either to contradict it or confirm it.

*Question :* Did Mr. Akbar Husain say anything more than that?

*Answer :* Yes, he said during the course of the conversation that matters had taken a very unfortunate turn and that some one was likely to get it in the neck and that Mr. Vidyarthi had admitted his mistake to him and it was Mr. Vidyarthi who was likely to get it in the neck. Then I said what is the solution of this. We have no animus against Mr. Vidyarthi. Then he said that he had advised Mr. Vidyarthi to go to Allahabad and to make a clean breast of the whole matter to the Chief Justice because if these facts came out in court, then the High Court might be put in a very false position.

I left Meerut the same noon on the 2nd. I went to Meerut again on the 3rd of September. I was called by Mr. Surajbal Dikshit



to see him and so I went and I saw him. Mr. Surajbal Dikshit said on the 3rd that he was anxious that there should be some sort of compromise so that Mr. Vidyarthi might not have to suffer. I told him in reply that it was a matter between the High Court and the *Hindustan Times* and I did not think any compromise between Mr. Vidyarthi and the *Hindustan Times* could be of any avail. Then I came away.

After the 3rd of September I came to the High Court on the 9th.

*Question :* Why did you go to Mr. Surajbal Dikshit?

*Answer :* Because Surajbal Dikshit wanted to see me.

*Question :* After the last hearing on the 9th and the present hearing did you go to Meerut?

*Answer :* Yes, I went there a few days ago to engage Mr. Gopi Nath Sinha, local advocate, as our counsel to appear in the High Court in this case and Mr. Gopi Nath Sinha is here. I went with Mr. Devadas Gandhi.

According to the practice prevailing in my office it is within my discretion and that of the editorial staff to reject any news item and not to publish the same. The entire responsibility is of the editor and the editorial staff for the publication. When we receive a letter from a correspondent, we are at liberty to change the language, but we do not alter the substance. So far as the headlines are concerned, they are entirely my own in the news item of 3rd August and besides that the word "new" before "Chief Justice" was also introduced by me. We have the original of the letter from Mr. Singhal (witness produced the letter dated 1st of August). He stated that this was the news received from Mr. Singhal from Meerut. (Witness has with his own hand marked the pages with the court's permission).

*Question :* Look at page 4 of the letter and state what changes did you make in that page in your capacity as sub-editor?

*Answer :* The corrections made on page 4 with ink are mostly mine, but at one place the word "donate" is in the handwriting

of the correspondent. I do not remember whether I introduced the inverted commas before and after the word "efforts" or whether the correspondent had done it with his own hand. It may be that I introduced the inverted commas while editing the copy.

At page 1 of the letter all that has been scored out and what is written in ink has been done by me.

On page 2, I have scored out certain portions and the whole of page 3 has been scored out by me. I also changed the order by putting page 4 at the top and the rest of the message under it. All this technically is styled as editing the news.

Throughout my period of three years on the staff of the *Hindustan Times* I have been dealing with news received from Mr. Singhal and I have never had any occasion to doubt his reliability or honesty. Numerous complaints about Judicial officers trying to raise contributions for war funds were received by us from all over India. We have published a few of those complaints and in regard to several others we have made editorial comments bringing it to the notice of the Government. All this happened before this particular news arrived.

I met Mr. Swami at Meerut on the 1st of September in the evening. He came to Prof. Dubey's house. At Prof. Dubey's house he complained that Mr. Vidyarthi had obtained a statement from his son-in-law, Mr. Krishna Swarup Sharma, by exercising pressure, stating that Mr. Vidyarthi had not made the statement attributed to him and he said that though it was a fact, Mr. Vidyarthi was trying to get evidence from lawyers and that it was very improper on his part to exercise pressure and to obtain such statements in order to save himself. It was after this conversation with Mr. Swami that I went next morning to Mr. Akbar Husain.

#### CROSS-EXAMINATION BY SIR WAZIR HASAN :—

The very identical pages corrected and edited by me in the letter of Mr. Singhal dated the 1st August went to the Press.

*Question :* The headlines do not appear in the letter of Mr. Singhal dated August 1 when you sent it to the Press?

*Answer :* That is a matter of technical convenience. Headlines are composed on a separate machine and the text is composed on another machine. Headlines are given on a separate piece of paper so that they may be immediately sent to the machine meant for composing headlines and the text is sent to the machine meant for composing text. The paper containing the headlines may be somewhere in our office. It is not in the file which we have brought. I wrote those headlines.

*Question :* What is the matter in this letter which led you to infer that there was a circular issued by the Chief Justice?

*Answer :* The words "The Judicial officers all over the Province have been, I reliably learn, asked by the Chief Justice of the Allahabad High Court, who, it is understood, has been requested by his Excellency the Governor for co-operation in war efforts to raise subscriptions for the war funds."

From the words "I reliably learn" I inferred that Mr. Singhal had received this information from other sources and inferred that those sources must be authoritative. From the word "reliably" I inferred that he was speaking from personal knowledge based on authoritative information from other sources.

*Question :* Did Mr. Dikshit at the interview you had with him tell you that there was no circular from the Chief Justice and that your only way of escaping the consequences was to apologize?

*Answer :* No, Mr. Dikshit had no discussion with me about the circular. He only wanted that we should come to some compromise with Mr. Vidyarthi.

*Question :* What did you understand by the word "compromise" in a case of this nature?

*Answer :* I thought that he wanted that somehow we should not mention the name of Mr. Vidyarthi because he also said that a Hindu Judge would be sacrificed. These are his words.

*Question :* Did you ask Mr. Dikshit to get a photograph of that alleged circular or letter?

*Answer :* His reply was that that was not practicable.

*Question :* From the conversation that you had with Mr. Dikshit you carried the impression that there was such a circular?

*Answer :* Yes. That was my impression then. I have no longer such an impression since his Lordship the Chief Justice has denied its existence. At the time of my interview with Mr. Dikshit I was aware of the issue of notice. The interview was on the 3rd of September. What Mr. Swami told me was not reduced to writing. I did not ask him to give it in writing because he said that he would not take any initiative in the matter, but if he were called by the High Court, then he would depose.

*Question :* Is it a fact that during the interview Mr. Dikshit told you that you should act in a manner so as not to make your paper suffer. He also told you that independently of the fact what Mr. Vidyarthi said or did not say, your offence for contempt was complete and that you should apologize?

*Answer :* No, he did not say anything about the paper. He only said that some way should be found to save Mr. Vidyarthi.

*Question :* Did you not in answer to what he had said tell him then and there that you would not apologize and that you were persons who were prepared to go to jail?

*Answer :* No, I did not say anything of the kind. I only said that we shall place all the facts before the High Court without caring for legalities and ask them to judge us on the basis of those facts.

*Question :* As regards your interview with Mr. Akbar Husain can you add anything to it or that is the whole purport of the conversation which you have already stated?

*Answer :* I also enquired from Mr. Akbar Husain whether Mr. Vidyarthi was going to accept his advice to see the Chief Justice and to make a clean breast of the whole matter to his Lordship. In reply to this Mr. Akbar Husain said that Mr. Vidyarthi had already written to the Registrar for an early appointment with his Lordship the Chief Justice and as soon as he received a reply he would go to Allahabad and make a clean breast of the whole matter. He also said that my correspondent was rather indiscreet

in passing on all kinds of information to me. In reply I told him that 'it is his duty to send me all the facts which come to his knowledge and it is for me to judge what to publish and what not to publish.'

*Question :* Whether Mr. Akbar Husain in the course of the conversation told you that he could not believe what you had told him that Mr. Vidyarthi was exercising undue influence in obtaining statements and whether Mr. Akbar Husain also said that Mr. Vidyarthi had already seen him and made what he thought a very frank and straightforward statement about what happened and that Mr. Akbar Husain thought that the local correspondent had been sending to the *Hindustan Times* false and mischievous information?

*Answer :* No. All that he said I have already stated in my examination-in-chief and the words used about the correspondent were that he was sending indiscreet reports. I distinctly remember the word "Indiscreet."

I spoke to my friend, Prof. Dubey, about the interview that I had with Mr. Akbar Husain, but I did not give Prof. Dubey the entire details of the interview. I did not meet Mr. Swami on that occasion after the evening of the 1st of September. I did not report to Mr. Swami the result of my interview with Mr. Akbar Husain.

TO COURT :—

*Question :* Were you present in this court when Mr. Akbar Husain and Mr. Vidyarthi were examined?

*Answer :* I was present in this court on the day when Mr. Vidyarthi and Mr. Akbar Husain were examined.

*Question :* Have you been taking an active part in instructing your counsel in this case?

*Answer :* I have been helping Mr. Devadas Gandhi in instructing the counsel with the information in my possession.

*Question :* Were you present in the court-room when Mr. Akbar Husain was examined?

*Answer :* Yes,

*Question :* Did you instruct your counsel to put to Mr. Akbar Husain in the course of cross-examination the fact that Mr. Akbar Husain had told you that Mr. Vidyarthi had admitted his mistake to him (Mr. Akbar Husain) ?

*Answer :* No, I did not instruct him.

*Question :* Can you assign any reason for this conspicuous omission ?

*Answer :* We put all the salient facts before our counsel and leave it to him to put any questions he likes. It may be that this fact was not described to him in detail.

*Question :* Do you or do you not consider this statement of Mr. Akbar Husain that Mr. Vidyarthi had admitted his mistake to him a salient fact in this case ?

*Answer :* I did consider that it was an important enough fact, but the line adopted by Mr. Vidyarthi of admitting collection of war funds in court gave it a different interpretation.

*Question :* It may be that all that Mr. Vidyarthi had admitted to Mr. Akbar Husain was his mistake in raising subscriptions for the war fund in the court-room ?

*Answer :* Yes. I did not specifically enquire from Mr. Akbar Husain as to what that admission of mistake amounted to. At that time my impression was that it amounted to making the statement implicating the Chief Justice and the Governor in the collection of war funds in court.

*Question :* So now you cannot say positively that Mr. Vidyarthi admitted to Mr. Akbar Husain that he had implicated his Excellency the Governor and the Chief Justice ?

*Answer :* I cannot say it either way.

*Question :* On how many dates in all between the 10th of August and this date you visited Meerut in connection with this case ?

*Answer :* I have visited Meerut three or four times in connection with this case.

*Question :* And during your visit you were engaged in the task of marshalling evidence?

*Answer :* No. In the first visit we went to ascertain the correctness or otherwise of the information supplied to us by our correspondent by meeting people whom he had named that they were present in court, the second time I went because Mr. Dikshit wanted to see me and the third time we went in order to engage and instruct Mr. Gopi Nath Sinha.

*Mr. Bharadwaja.*

*To Court (Contd.)*

*Question :* Do the first paragraph in the news item of 3rd August and the editorial comment in the issue of the 5th have a political flavour in them?

*Answer :* No, they have no political flavour. It is all factual.

*Question :* Are the first paragraph and the editorial comment completely divorced from political flavour?

*Answer :* If the raising of war fund is politics, then the first paragraph and the editorial comment are associated with politics, otherwise not.

*Question :* If the raising of war fund is a branch of political activity, then the first paragraph and the editorial comment have a political flavour in them?

*Answer :* No. I suppose "association" and "flavour" are two different things. There it is the facts about raising of war funds which have been mentioned.

*Question :* Do you now realize that it was highly improper on your part to associate the Chief Justice with the involved atmosphere of politics and take him out from the purer atmosphere of administration of justice?

*Answer :* At the time I passed this news, I did not consider it as improbable that some such instructions might have been issued because the Chief Justice of the Lahore High Court has himself

been going about raising war funds and speaking on the subject of war efforts.

*Question :* But now you realize your mistake in associating the Chief Justice of Allahabad with politics?

*Answer :* After your Lordship's denial of any kind of instructions by you to judicial officers in connection with war funds, I do think that our Chief Justice at any rate is not associating himself with controversial politics.

*Question :* Apart from the denial by the Chief Justice, is it now clear to you as daylight or not that the Chief Justice of Allahabad is completely dissociated with politics? I consider you to be an intelligent and experienced member of the public and, therefore, these questions, and I expect candid answers to these questions.

*Answer :* I do think that the Chief Justice of Allahabad does not take part in any controversial politics. But at that time the question of raising war funds was not considered by me as any highly improbable thing because of the experience of the Punjab.

*Question :* At this moment do you realize your mistake or not?

*Answer :* Yes, now we do feel that an injustice has been done to the Chief Justice by associating him with collection of war funds.

*Question :* And even then the course that would have appealed to a gentleman did not appeal to your editorial staff, viz., the course of submitting an abject and unqualified apology?

*Answer :* We have been thinking of making amends to his Lordship the Chief Justice, but we at the same time wanted to place before him all the facts which have come to our knowledge.

*Question :* Is it appreciated by you and other members of your staff connected with this case that it is now too late to tender an apology?

*Answer :* No, that is not my impression.

*Question :* You stated yesterday that you had put a note of interrogation after the word "circular" in the headlines as no circular



was mentioned by your correspondent and it was merely your inference that a circular might have been issued. Now state whether it was consistent with your responsibilities as a journalist to make such serious an allegation against the Chief Justice on a mere surmise or inference on your part.

*Answer :* I did not want the public to conclude that it was an absolute truth that a circular had been issued and I wanted to guard myself against the public drawing any hasty conclusion and having any decisive opinion about his Lordship the Chief Justice in this matter.

*Question :* Were the headlines in the news item calculated to lead the reader of the paper to conclude that what was alleged against the Chief Justice may probably be true?

*Answer :* The public could form their own conclusion. Some people would think that there was a circular, some might think that there was not a circular.

*Question :* Do you consider such a publication consistent with your responsibilities as a journalist?

*Answer :* I do feel that if it is based on reliable information, such a thing should be published in public interest.

*Question :* Are you now conscious that you abused your position as a journalist in putting those headlines?

*Answer :* I do not think I have abused my position as a journalist in putting those headlines because I believe that, the Punjab High Court Chief Justice having interested himself in war efforts, this thing may not be improper.

*Question :* So you consider it consistent with journalistic propriety to attribute improper conduct to the Chief Justice of the Allahabad High Court on analogy drawn from some other person?

*Answer :* I thought that if it was not improper for the Chief Justice of the Lahore High Court, it cannot be improper also for the Chief Justice of the Allahabad High Court to take interest in war effort.

*Question* : Do you mean to say that you now hold the view that it was not at all improper for the Chief Justice of the Allahabad High Court to interest himself in the raising of war fund?

*Answer* : Our paper had criticized the Chief Justice of the Lahore High Court for taking interest in raising war funds and we do consider it improper for a Chief Justice to take interest in this kind of effort.

*Question* : Did it occur to you that before putting these headlines, you should verify whether a circular had been issued by the Chief Justice?

*Answer* : Work in a newspaper office has to be done under great pressure and we have to carry on a race with time and sometimes we cannot realize all the implications and interpretations that may be put on a thing.

*Question* : In other words, that pressure and race justifies recklessness on the part of the editorial staff?

*Answer* : No, this is not a justification for recklessness, but we depend on our experience and intuition to decide whether a thing is proper to be published or not.

*Question* : Does that experience and intuition justify the indiscriminate throwing of mud?

*Answer* : No, I did not consider it any throwing of mud.

RE-EXAMINED BY SIR TEJ BAHADUR SAPRU :—

Mr. Akbar Husain's statement was recorded when I was present in the court room and I heard every part of it.

Read and admitted it to be correct.

A note is appended about omissions.

(Sd.) D. D. Bharadwaja.

Hons. C. J. and H. J. C., J.

This statement has been recorded in our presence and under our supervision.

26-9-'41.

## DR. D. L. DUBEY

*Deposition of Dr. D. L. Dubey, son of Pt. Chhedi Lal, Brahman, about 44 years, Professor, Meerut College, on solemn affirmation.*

EXAMINED BY SIR T. B. SAPRU :—

I am a Professor at the Meerut College, Meerut. I have been connected with the Meerut College for over eighteen years. I took my Ph.D. degree at the London University. That was during this period. I have known Mr. Bharadwaja for over twenty years. I came to know Mr. Devadas Gandhi since the 31st of August last. Before that I did not know him. I am neither a Congressman nor anything else, but I am a student of politics. I wrote a number of articles criticizing the Congress Ministry in the United Provinces. On the 31st of August last Mr. Bharadwaja and Mr. Gandhi saw me at Meerut. They gave me the impression that they had come on a fact-finding mission in connection with the case of the *Hindustan Times*. I think, so far as I recollect, the first question that they put me was with regard to Radhe Lal Singhal, the correspondent of the *Hindustan Times*. They asked me what was the position and reputation of Radhe Lal Singhal. I said he was a good and independent man and I knew him. On one occasion at least he had shown that he was above temptation. Mr. Gandhi gave me the impression that he wanted to verify from some eye-witnesses what Mr. Singhal had written to the *Hindustan Times* was or was not true. He mentioned to me the names of Mr. Banerji and Mr. Surajbal Swami and also of Mr. Hanifi. I know Messrs. Banerji and Swami, but I am not intimate with them. I saw Mr. Banerji thereafter and I had a talk with him about the incident under inquiry. He lives 200 yards off from my place. I saw him at his place. He told me that he was present that day in the court-room. He further said that Mr. Vidyarthi delivered a part of the judgment and afterwards he made a reference to a talk that was held between his Excellency the Governor and the Chief Justice and later on he said that there were some instructions to that effect and in response to those instructions he made an appeal for funds. Some amount of money was collected there and placed on his table. Thereafter I asked him to accompany me to my house. I did so because I did not want to take the responsibility of conveying his version and I wanted him to give

first-hand information to Messrs. Gandhi and Bharadwaja. He came sometime in the afternoon. The conversation in my room took place in the presence of myself, Mr. Bharadwaja, Mr. Gandhi and Mr. Banerji. This happened on the evening of the 31st of August. Mr. Banerji repeated the same thing he had told me in the morning at that conversation. Mr. Gandhi did put a specific question to Mr. Banerji as he wanted to get to the bottom of the truth. Towards the end of the conversation Mr. Gandhi put a straight question to him whether he would be prepared to give an affidavit on the lines of the statement made by him. He said he would not like to volunteer himself in that way, but he would be prepared to go to the High Court if necessity arose and if he was called to the High Court. He said he would state in the High Court what he had stated to us at that meeting. After this conversation Mr. Devadas Gandhi had to leave that very afternoon. I was anxious that Mr. Banerji should make his entire statement before Mr. Gandhi as I wanted to evade the responsibility of reproducing Mr. Banerji. After Mr. Devadas Gandhi left for the station in the evening, Mr. Bharadwaja stayed on with me. Mr. Surajbal Swami was out of station that day. I met him the next day. Mr. Bharadwaja was not with me at that time. I met Mr. Swami in his chambers in the law courts. The law courts are quite close to my college and residence. I went to him at about 3 o'clock in the afternoon. That takes me on to the 1st of September. I told him that Mr. Gandhi had come the previous day and he wanted to meet him (Mr. Swami).

*Question :* Did you ask him as to what had happened in his presence on the day in question?

*Answer :* I do not exactly remember what talk I had with Mr. Swami. I do not exactly remember the conversation that took place between me and Mr. Swami, but there was some conversation between me and Mr. Swami.

Mr. Bharadwaja went to my place on the 3rd of September and I think he did stay with me that day. Mr. Bharadwaja visited me on several occasions and, therefore, I am not positive on which occasion he stayed with me and on which he did not. He positively saw me on the 3rd. I rang up Mr. Devadas Gandhi on

the evening of the 2nd and he said that Mr. Bharadwaja would be coming the next day. I had received a message the previous evening from a certain respectable lawyer that he wanted to see me and I had gone to see him the previous night.

*Question :* What did he ask you to do?

*Answer :* He asked me whether Mr. Bharadwaja was with me and I told him that he had gone. He asked me to get either Mr. Gandhi or Mr. Bharadwaja.

*Question :* Did the respectable lawyer tell you why he wanted them or either of them?

*Answer :* He wanted to have a conversation with them about the contempt of court affair and to consider if any way could be found out to save Mr. Vidyarthi, if possible.

For that reason I rang up Mr. Devadas Gandhi and Mr. Bharadwaja arrived the next morning (day as slip attached). That gentleman had asked me to inform him what the result of my 'phone was and I informed him early in the morning that Mr. Bharadwaja would be coming at about 10 o'clock. The next morning Mr. Bharadwaja arrived on the morning of the 3rd of September at about 3 o'clock. Before the arrival of Mr. Bharadwaja that respectable gentleman had himself called at my residence in order to enquire whether Mr. Bharadwaja had arrived. After Mr. Bharadwaja arrived, I sent a message to the respectable lawyer and the respectable lawyer sent message to me requesting that Mr. Bharadwaja should go to him. I accompanied Mr. Bharadwaja to the respectable lawyer's house. The respectable lawyer said, 'Could you somehow or other save Mr. Vidyarthi? He is a man with family and children.' Something like that went on between them. Mr. Bharadwaja said, "It is a matter between the High Court and the *Hindustan Times*. We have no grudge against Mr. Vidyarthi."

*Question :* Did that respectable lawyer tell Mr. Bharadwaja to go to the High Court and tender an apology for what the *Hindustan Times* had published?

*Answer :* He did not suggest it to Mr. Bharadwaja.

That respectable lawyer was Pt. R. B. Surajbal Dikshit. He is a leading criminal lawyer of Meerut. He is a man of considerable influence both in the bar and the judiciary. Mr. Bharadwaja said that there were two alternatives open, either Mr. Vidyarthi should state the truth in the High Court or he should inform the Chief Justice in the meantime and make a clean breast of the whole affair. There were some arguments thereafter and ultimately Mr. Dikshit came round to the view that Mr. Vidyarthi should see the Chief Justice. I think this is all the conversation that took place and I have nothing further to add. Two of my colleagues, Prof. Madan Mohan and Mr. Khare, were also at the interview with Mr. Dikshit. They are professors in the Meerut College. After that we left Mr. Dikshit's place. I do not remember whether Mr. Bharadwaja stayed that night or not. All this happened on the 3rd. I saw Mr. Devadas Gandhi then on the 10th at Delhi where I had gone to give a radio talk and there I went to see Mr. Gandhi for a few minutes. I had not much talk there. After the 10th Mr. Gandhi went to Meerut about five days ago and Mr. Bharadwaja also accompanied him. I went to my place in my absence and had tea there. Afterwards I met them. They told me that they had come to engage Mr. Sinha. They did not ask me to do anything. Mr. Surajbal Swami did come to my house on the 1st of September. Mr. Swami told us that Mr. Vidyarthi had taken some sort of statement from Krishna Swarup, his son-in-law, under pressure. Mr. Gandhi was not there. Mr. Bharadwaja was present at that time. Mr. Swami was very angry. He said that he was very indignant with his son-in-law and had told him that he (son-in-law) would sign his (Mr. Swami's) death warrant.

*Question :* Did Mr. Swami tell you then that he had heard the judge making the statement in court which is attributed to him?

*Answer :* I think he did.

Mr. Swami always said that he would speak the truth, whatever happened. I do not recollect any part of the conversation that may have further taken place between Mr. Bharadwaja and Mr. Swami.

## CROSS-EXAMINED BY SIR WAZIR HASAN :—

*Question* : May I take it that you played the role of an agent of Mr. Gandhi and Mr. Bharadwaja for the purpose of collecting evidence for them?

*Answer* : My Lord, it is a wholly unwarranted assumption.

*Question* : What interest had you in helping them by going to Mr. Banerji and to Mr. Swami?

*Answer* : Mr. Gandhi wanted to ascertain the truth from eye-witnesses and as they had come to my place, it was my duty to give them that facility.

Whatever I have stated about the purport of the conversation at the interview with Mr. Dikshit is all that I remember.

*Question* : Did you or Mr. Bharadwaja ask Mr. Dikshit for a photographic copy of the alleged circular?

*Answer* : We did not ask specifically Mr. Dikshit but we said if we could have a photograph of the circular that would absolve Mr. Vidyarthi of all the responsibilities.

At the interview Mr. Dikshit said positively that there was no such circular in existence and therefore no photographic copy could be had.

*Question* : Did Mr. Dikshit tell Mr. Bharadwaja that the only way to get out of the contempt case was to go to the High Court and to tender an apology?

*Answer* : I do not think that he advised him in that way.

*Question* : In what way did he advise?

*Answer* : I do not remember exactly the text of the conversation but I have already given the gist. Mr. Bharadwaja had suggested to Mr. Dikshit that it was of Mr. Dikshit to find some way out of the difficulties. What Mr. Dikshit said in reply I do not remember.

*Question* : Did Mr. Bharadwaja tell Mr. Dikshit at that interview that he would not accept his advice and that he was not afraid of going to jail?

*Answer :* Mr. Bharadwaja said, 'Well, we are not afraid of the consequences. We should be able to establish the position of the *Hindustan Times*.'

*Question :* In what connection and with what advice did Mr. Bharadwaja say this?

*Answer :* Probably Mr. Dikshit had held out a suggestion that it would be difficult for Mr. Bharadwaja to bring lawyers to court and depose to that effect.

*Question :* Therefore what Mr. Gandhi and Mr. Bharadwaja should do?

*Answer :* They should seek some sort of way out for the purpose.

*Question :* Did any of you ask Mr. Dikshit as to what was the way that he suggested?

*Answer :* Yes, we asked him what was the way that he suggested. He was simply telling us that it would be useless for you to proceed in the way. You will not be able to support your version. As a matter of fact they wanted to establish in the High Court that what Mr. Singhal had written was true but Mr. Dikshit said that it would be difficult for them to establish that fact.

*Question :* What was your object in going to the chambers of Mr. Swami?

*Answer :* I went to tell him that Mr. Gandhi wanted to see him.

I do not remember the text of the conversation that I had with Mr. Swami in his chambers. All that I remember is that the conversation that I had with him had reference to certain statements that were being collected. What transpired between me and Mr. Swami, I communicated to Mr. Bharadwaja. I had on many occasions before this date repeated what Mr. Banerji and Mr. Swami told me at my house. I do not remember any such occasion. The words used by Mr. Banerji have been stated by me and not merely the substance of his conversation. I had no talk with Mr. Singhal directly.



**Question :** What experience had you about Mr. Singhal on the basis of which you formed your opinion about him?

**Answer :** I remember on one occasion certain parties wanted him not to send news regarding a particular case that was being reported and he did not yield to that request. They wanted to offer him some money. That happened three years ago. I had absolutely no interest in that matter. That person had approached me with the request that I should write to the *Hindustan Times* people that they should not publish that news.

TO COURT :—

**Question :** Why did that man approach you with the request to *Hindustan Times*?

**Answer :** As a matter of fact, he had approached my neighbour and the neighbour approached me to ask the *Hindustan Times* people not to publish that news.

**Question :** Did that neighbour know that you wield great influence with the *Hindustan Times* staff?

**Answer :** Yes, he knew that I knew Mr. Bharadwaja.

Mr. Bharadwaja and I are friends.

**Question :** And intimate friends too?

**Answer :** I cannot say intimate.

**Question :** Was that the only incident about Mr. Singhal that you knew?

**Answer :** He always sends faithful reports to the Press.

**Question :** Did you on previous occasions verify the report sent by him to the Press?

**Answer :** Of course, I had seen certain reports concerning the Meerut College affairs and I had found that they were a faithful picture of what had happened.

**Question :** It was on the basis of this that you formed the opinion about Mr. Singhal that you have stated in your examination-in-chief or was there any other material available to you for the formation of that opinion?

*Answer :* He occasionally came in contact with me and I always saw him in all circles and he had a better reputation than others.

*Question :* You consider that a man who moves in all circles must necessarily be honest and truthful?

*Answer :* I think that one who is true must always be in a position to please every one.

Mr. Sinha is quite a good legal practitioner at Meerut and Messrs. Bharadwaja and Gandhi went to engage Mr. Sinha.

*Question :* Did you enquire from Mr. Gandhi or Mr. Bharadwaja as to where was the necessity of taking a counsel from Meerut when eminent counsel were appearing for them in the High Court?

*Answer :* The feeling at Meerut was that the cross-examination of Mr. Vidyarthi had not taken place in as satisfactory a manner as it could have been done, otherwise the whole truth would have been out to the High Court at that time. It was specially due to the fact that no lawyer with a background of the incident was present at the time of the cross-examination.

I do not know whether by the 31st of August when Mr. Gandhi and Mr. Bharadwaja arrived, there were two divergent versions, about this incident, current in Meerut. I had not till then interested myself in this matter

*Question :* You interested yourself in this matter from the 31st of August?

*Answer :* Not exactly.

*Question :* Then what?

*Answer :* I simply wanted to give facilities to these people to meet the eye-witnesses. By these people I mean Mr. Gandhi and Mr. Bharadwaja.

*Question :* Why did Mr. Gandhi ask Mr. Banerji to give an affidavit? Was Mr. Gandhi doubtful whether Mr. Banerji will stick to his statement to the last?

*Answer :* Mr. Gandhi thought that the whole affair would be over at the first hearing if he could get a statement of that sort from Mr. Banerji.

I frequently met Mr. Banerji after that date. In the subsequent interview that I had with Mr. Banerji I asked him and he told me that he would stick to his statement. He began wavering as a matter of fact.

*Question :* When did he waver for the first time?

*Answer :* He began wavering from the 1st.

Mr. Banerji began to waver from the 1st of September. It came to my knowledge at about 2 or 3 o'clock in the afternoon of the first of September that Mr. Banerji had begun to waver. In the meantime he had met some people?

*Question :* What people?

*Answer :* He had seen Mr. Akbar Husain. He had seen Mr. Dikshit also.

*Question :* Do you mean to suggest that Mr. Akbar Husain was trying to win over witnesses in the interest of Mr. Vidyarthi?

*Answer :* That is for you to judge, My Lord.

*Question :* Is it your suggestion that Mr. Dikshit was trying to suborn the evidence with a view to help Mr. Vidyarthi?

*Answer :* That again is for you to judge, My Lord.

*Question :* Are you reluctant to make a statement on the point?

*Answer :* I do not want to make any insinuation about any individuals.

*Question :* Can you suggest any substantial reason for Mr. Banerji beginning to waver within 24 hours of the conversation that he had with you?

*Answer :* Probably it must have been brought home to him that the matter was more serious than he had taken it to be.

**Question :** Is it true that from 2nd after the 31st of August there was a tug of war between the parties for the preparation and concoction of evidence?

**Answer :** There was only one party in the tug of war and that was Mr. Vidyarthi's party and they had begun taking statements from lawyers.

Mr. Gandhi also wanted to get a statement from Mr. Banerji of what had actually happened.

**Question :** How do you know that Mr. Singhal was offered a bribe and refused it?

**Answer :** I know because those people approached my neighbours.

**Question :** Who told you?

**Answer :** My neighbour told me.

**Question :** Have you any objection in disclosing the name of your neighbour?

**Answer :** I do not think it necessary to disclose his name.

RE-EXAMINATION OF SIR TEJ BAHADUR SAPRU :—

I never had any reason to feel that any item of news sent by Mr. Singhal was lacking in truth or precision.

Read and admitted to be correct.

Sd. D. L. Dubey.

Recorded under the supervision of the Court.

*Hon'bles C.J. and H.J.C., J.*

This statement has been recorded in our presence and under our supervision.

26-9-'41.

## MR. ATTAR SINGH

[UNOFFICIAL ENGLISH TRANSLATION OF MR. ATTAR SINGH'S EVIDENCE RECORDED IN URDU.]

### *Statement on solemn oath of Attar Singh.*

"My name is Attar Singh. Father's name, Durga Singh. Caste, Rajput. Age, 34 years. Profession—clerkship. At present clerk to Lala Chattarpal, Vakil. Resident at Meerut.

"I remember the Dhakoli murder case. This case was tried in Mr. Vidyarthi's court. I was acting as a *pairokar* for the complainants. Judgment was delivered in the case on July 31, 1941. I was in the court at the time of the delivery of the judgment. There were 20 accused in the case. The judge sentenced four of the accused to transportation for life and six months' imprisonment. Nothing was said at that time in regard to the rest of the accused. After a minute or two, four of the accused who were prosecuted on private complaint were asked by the court to come forward. On their coming forward they were asked to give subscription. After remaining silent for some time, Khacheroo Choube said, "We have been robbed sufficiently. We have nothing to give." They meant that they had spent a lot on the case. The judge said that the Governor and the Chief Justice desired that war contributions be collected. Consultations were then held between the *pairokars* of the accused and their counsel and after that money was paid. Two hundred rupees were paid on behalf of these four accused. The names of these four accused are : Khacheroo Choube, Manni, Munshi, and Fazil *alias* Kharak Singh. Two hundred rupees were collected in currency notes. These notes were counted by Mr. Banerji, and he said that the amount was correct. After that Mr. Surajbal Swami said that he had with him Rs. 150 on behalf of his clients and he would deposit the sum. When Mr. Surajbal Swami asked about the judgment regarding the remaining accused, the judge replied that the remaining accused were acquitted. There was an interval of 15 minutes between the sentencing of the four accused and the order of acquittal of the remainder.

### CROSS-EXAMINATION :—

"I know Mr. Singhal. I know him from the time of the Dhakoli

murder case. I did not know him before that. I have been living at Meerut since 1930. I have been lawyer's clerk since 1930. I am a clerk of Mr. Chattarpal, Vakil. I have been attending the courts in connection with my clerkship since 1930. It is possible that I might have seen Mr. Singhal in the interval between 1930 and the date of the Dhakoli case. I have known Gauri Shankar for the last five or six years. I have no connections with him. Between 31st July, 1941, and this day I saw Mr. Singhal and Gauri Shankar only yesterday. From 31st July till today there has been no talk between them and me. I received this court's summons. Before coming to Mr. Chattarpal, I was clerk of Mr. Fattan Lal, Vakil. The judge was speaking about war fund contribution for those 15 minutes. At the time of counting the money Mr. Banerji was present in the court. But I cannot say whether at the time of pronouncement of the judgment he was there or not. I did not see Mr. Moti Lal in the court room at the time the judgment was pronounced. Mr. S. C. Gupta, Bar-at-Law, a counsel on behalf of the accused, was present in the court room at the time of the pronouncement of the judgment. Mr. Gopinath Sinha was the counsel on behalf of the complainants. He was not present in the court on that date, that is, on the day the judgment was delivered. No lawyer on behalf of the prosecution was present in the court at the time orders were passed.

TO COURT :—

“My pleader, Mr. Chattarpal, did not represent any party in the Dhakoli case. The men who were murdered were my relations. I was not grieved by the acquittal of the sixteen accused.”

*Question* : Did this decision cause sorrow or delight to you and other *pairōkars*?

*Answer* : It caused us neither delight nor sorrow.

During my presence, the judge did not ask for contribution from the complainants' party or from those accused who were convicted; nor did he ask for it from the remaining 12 accused who were prosecuted by the police and were acquitted by him. In my presence only those four who were prosecuted on complaint were asked to contribute. Till today nobody has asked me to come and give evidence in the High Court. Mr. Surajbal Swami was counsel on

behalf of three accused in that case. He had said that he had with him Rs. 150, which he would give as contribution of his three clients,

Read and admitted to be correct.

(Signature in Urdu) Attar Singh.

*Hons. C.J. and H.J.C., J.*

This statement has been recorded in our presence and under our supervision.

(Sd.) I. A.

26-9-'41.

(Sd.) H. J. C.

## MR. SURAJ BAL SWAMI

*Statement of Mr. Suraj Bal Swami, Pleader, Meerut, on oath.*

I have been practising in Meerut for about the last 13 years. I practise specially in the criminal courts. I frequently appear in sessions cases. I very vividly remember the Dhakoli case. I appeared as defence counsel for three of the accused in that case. Those accused were acquitted. The judgment was delivered on the 31st of July, 1941. The judgment was delivered between 3 and 4 p.m. He delivered first the judgment with regard to the four of the accused persons who were sentenced to transportation for life. He did not deliver the judgment as regards the rest of the accused when I was there, but the lawyers present there knew that they stood acquitted.

Money for war fund was collected that day in the court-room. Rs. 200 were collected in notes and a promise for Rs. 200 was made on behalf of probably two persons who were represented by an advocate from Bijnor.

*Question :* Did you make any offer on behalf of your clients?

*Answer :* It was no question of an offer. I discussed the matter with the judge and another lawyer present there. The discussion was that the lawyer told me that my three clients had to give Rs. 300, i.e., Rs. 100 each and I said that you were not engaged to have them hanged. Thereafter he said that the judge also wanted it and I said : "The judge may want a thousand rupees, but you are their counsel." I said so because he was appearing in the case with me. Thereafter I said that as Rs. 200 had been paid by four accused persons, my clients should pay at the rate of Rs. 50 each, i.e. Rs. 150. Then I said that I was ready to pay Rs. 150, but I had no money ready with me at that time. The question of raising money in court arose at the instance of the judge.

*Question :* Will you kindly relate to their lordships the language or the substance of the language which the judge used in making an appeal for the raising of the fund?

[*Note.*—At this stage when the witness was not prompt in answering the question, Sir Tej Bahadur Sapru suggested to the witness that he might answer the question in Urdu if he so desired. The witness then stated : "No, no. It is a question of recollection because I have not talked over the matter to many persons." ]



*Answer :* The judge said addressing to Mr. S. C. Gupta so far as I remember—I cannot vouchsafe the guarantee of my statement in this connection being *verbatim* true, but the substance of the words was:

*“Ham kya karen His Excellency the Governor Saheb Chief Justice Saheb se mile the. Unhon ne ham se kaha aur ham ko aisa karna hota hai,”* or some such things.

*Question :* Are you quite positive that you heard the judge refer to his Excellency the Governor and to his lordship the Chief Justice?

*Answer :* Certainly. I am very positive and it is true. I was asked on numerous occasions to see the judge personally, but I persistently refused to see him. I eventually saw the judge in his chambers on the 10th of September when one of my criminal appeals was on.

*Question :* Will you tell us what passed between you and the judge in the chamber?

*Answer :* The substance of it was that the judge suggested that either I should take his resignation or I should not give evidence against him to the effect that he had mentioned the Governor or the Chief Justice in connection with the raising of subscription and then he showed me a copy of the affidavit that was probably sent to him that morning.

That was an affidavit of Mr. Gandhi. That was on the 10th of September and the judge was to proceed that day to Allahabad in pursuance of the orders of the High Court. I saw that affidavit. He showed the affidavit to me. He asked me to suggest answers to some of the paragraphs in the affidavit. He never read the paragraphs over to me nor did I read the paragraphs. He handed over the affidavit to me and he said he was unhinged. I told him, “Sir, I am not going to tell a lie and I cannot tolerate your face any longer and probably you may also be wishing the same.” Thereafter I left his court abruptly. I came to know that the judge had called my son-in-law Krishna Swarup. Exactly he was not called. I sent him because the judge repeatedly sent his men, his peons, to me, asking me to see him. I asked my

son-in-law Krishna Swarup to go and find out what the judge wanted to say to me. This happened on the 1st of September. Then my son-in-law did go to the judge and remained with him in his chambers for 45 minutes. I then sent Mr. D. P. Mittal, a junior advocate, to find out what was happening to my son-in-law. He reported to me that Mr. Krishna Swarup was in the judge's chambers. Thereafter Krishna Swarup came and told me that the judge pressed him and had obtained a writing from him. I lost my temper at once and I left the place at once for my home. I did not rebuke my son-in-law then. I discovered only three or four days ago what my son-in-law had written. He had written something like that he was present on the date of the delivery of judgment and the judge did not use the name of "His Excellency" and "My Lord the Chief Justice" in raising subscriptions. But my son-in-law on his return had reported to my clerk what had happened. I gathered the contents from my son-in-law only four days ago. The fact is that after the day that he had an interview with the judge on the 1st of September, he left practice at Meerut and went away to practise at Bijnor.

*Question :* Why did your son-in-law leave Meerut and go and settle at Bijnor?

*Answer :* My son-in-law knew my habit that for the last two years I have not told a conscious lie and because I had turned out my son who used to tell any amount of lies; therefore, my son-in-law left Meerut.

*Question :* Anyhow, this incident has led to very unpleasant consequences in your family?

*Answer :* Yes, it has. He had dragged my daughter also away from me and went with bag and baggage from Meerut to Bijnor.

For the first time I met Mr. Devadas Gandhi about half an hour ago. I did not talk to him. I know Mr. Dubey by face. I do not remember any occasion on which I may have met Mr. K. N. Banerji at the residence of Mr. Dubey. There was a conversation between me and Prof. Dubey about this incident. It was on the 1st of September between 12 and 1 p.m. Prof. Dubey met me in my chambers in Court. He told me that one Mr. Bharadwaja and Mr.

Devadas Gandhi had come on the 31st of August to meet me, but as I was away, they could not meet me and either I should go to see Mr. Gandhi or he should bring Mr. Gandhi to me. I answered that I did not want to pick up Mr. Gandhi's acquaintance.

*Question :* Have you any objection to the word "Gandhi"?

*Answer :* No.

*Question :* Then what was passing in your mind when you told him that you did not want to meet Mr. Gandhi?

*Answer :* I thought I did not know what statement they would like me to make and, therefore, I said I did not want to meet Mr. Gandhi and besides, I do not go to see anybody in Meerut, nor do I invite anybody at my place without business. My interests are confined to my professional work and to a study of all the religions of the world.

*Question :* And, therefore, you do not mix in society?

*Answer :* No.

I have had no conversation with Mr. Gandhi upto this moment concerning this incident. But Mr. Bharadwaja and Mr. Dubey appear to me to be old chums, because I saw a photograph when I went to Mr. Dubey's place once, in which Dubey and Bharadwaja were photographed together and he said to me that he was Mr. Bharadwaja and they were students at Agra. On various occasions Mr. Bharadwaja and Mr. Dubey met me and wanted me to make certain statements.

*Question :* Then should I take it that your position was that you would not like to commit yourself to anyone but would, if necessary, come to court and make your statement to their lordships according to your conscience.

*Answer :* No, Sir, this is also not correct. I did not want to give evidence in this case.

*Question :* Will you please tell us why you did not want to give evidence?

(*Witness :* Is it cross-examination?)

*Court :* Answer the question.

## THE HINDUSTAN TIMES CASE

*Answer :* In Meerut there have come to be two distinct parties because of this unfortunate incident. One is composed of Dubey, Bharadwaja and certain leading Congressmen, one of them being a premier zamindar of U.P. And the other party is of the Judge.

*Question :* Who are the members of the other party?

*Answer :* Certainly, I know that the judge had the support of our President, President of the Bar Association, Rai Bahadur Pandit Surajbal Dixit, Rai Sahib Moti Lal, S. C. Gupta, Barrister, and several other persons, and that was the reason that I did not like to drag myself into the mud.

*Question :* Did you ever go to Mr. Akbar Husain to complain that the judge had taken a written statement from your son-in-law?

*Answer :* No.

### CROSS-EXAMINED BY SIR SYED WAZIR HASAN :—

*Question :* You said that within the last two years you have not uttered a conscious lie. Are we to infer that you did utter conscious lies previous to that?

*Answer :* Certainly not, never. By the words "conscious lie" I mean that which is palpable lie to me.

*Question :* Did you offer protest at the time when the subscription was being raised?

*Answer :* Why should I. It is not a lawyer's duty. I did not consider it an improper act on the part of the judge because the name of his lordship the Chief Justice was there.

*Question :* You did not consider it improper because the name of the Lord Chief Justice was associated with that?

*Answer :* Because the statement was made in the name of his lordship the Chief Justice by a man who occupied a very important chair in the district, I thought, as other lawyers began to think, then, that some how or other this thing may have happened.

*Question :* If it had not been associated with the name of the Chief Justice, it would have been an improper act?

*Answer :* I do not know anything about it.

The contents of the writing that the judge had taken from my son-in-law were communicated to me by my clerk on the 1st of September. I believed my clerk's statement, because writings had been obtained from other persons.

*Question :* You expressed no indignation to your son-in-law?

*Answer :* The indignation was apparent from my eyes. I had not spoken a word to him.

*Question :* Did you ever by words or in some other direct way express your indignation to your son-in-law? .

*Answer :* I never expressed my indignation in words.

*Question :* Is it right to suggest that he left Meerut because of your anger with him over what he had done?

*Answer :* Yes, because he had reasons to infer that I hate a man who lies, as I submitted I turned out my son, and I must feel angry over his act. Three or four days ago, he told me the contents of his writing and he did not tell me this before, in details.

*Question :* Your statement is that you never repeated what had happened in court that day either to Mr. Dubey or to Mr. Bharadwaja or to Mr. Gandhi?

*Answer :* I never repeated to Mr. Dube or to Mr. Gandhi or to Mr. Bharadwaja what had happened in court on the 31st of August except on the morning of the 12th September when all three of us (Dubey, Bharadwaja and myself) went to see Mr. K. N. Banerji.

TO COURT :—

*Question :* May I take it that the decision of the judge as regards all the twenty accused was known to the lawyers at one and the same time, i.e. that four accused had been convicted and the rest acquitted?

*Answer :* My Lord, this is the position. The lawyers present knew it.

*Question :* Then the accusation against the judge that he delivered judgment piecemeal is untrue?

*Answer :* Certainly. I may add that we knew that this is the state of affairs. But if by the word "delivered" it is understood that some portion of it was read loudly to the accused and some portion was not, then it is not correct.

*Question :* Will you kindly elucidate the statement that you made about the delivery of judgment in the first paragraph of your examination-in-chief which has just been read over to you?

*Answer :* My Lord, the position is that some of the lawyers may have been present before me when the warrants for the commitment of the accused, who were convicted, to jail were being written and it may have been then that they somehow or other inferred and also knew that my clients also stand acquitted.

*Question :* How did you know that your clients stood acquitted?

*Answer :* The entire court was chock full and for some time I stood in the gallery. Then Harish Chandra probably informed me that papers were being written to send some of the accused to jail and we did not know what will happen to our men, and he asked me to go in and find out. I told him that Mr. Gupta was there, but then he insisted on my going and I went there and from the talk which had been going on previously between the judge and some of the lawyers present before the judgment was pronounced, I gathered that the rest of the accused were to be acquitted.

*Question :* So it is a fact that all at once it was known to everybody concerned that four of the accused had been convicted and the rest acquitted?

*Answer :* Yes, even to the persons acquitted and convicted.

I lead a very secluded life and I am not on visiting terms with anyone in Meerut. The relations between my son and me are strained and so are the relations between me and my son-in-law now.

*Question :* Do the people harbour the feeling that you have got an uncontrollable temper?

*Answer :* Yes, some of them. I myself am conscious of this fact.

*Question :* What is the nature of the relations between you and Mr. Surajbal Dixit?

*Answer :* He is a distant relation of mine. He is a thorough gentleman. He loves me very much and is a man of very high position, such as Sir Tej Bahadur Sapru's.

Sd. Suraj Bal Swami.

26-9-41.

Read and admitted it to be correct.

Hons. C.J. and H.J.C., J.

This statement has been recorded in our presence and under our supervision.

26-9-41.

## MR. KRISHNA SWARUP

*Deposition of Mr. Krishna Swarup, on S.A.*

My name is Krishna Swarup Sharma, father's name Pt. Nathu Mal.

I am a Vakil. I have been practising as a Vakil for about 8 or 9 months. I am not practising at Meerut now and I have left Meerut now. I now propose to practise at Bijnor. On 1st September my father-in-law, Mr. Surajbal Swami, asked me to go to Mr. Hari Shankar Vidyarthi to enquire from him why he is calling Mr. Surajbal Swami. I went there and he made me sit there. Mr. Vidyarthi then gave me some 4 or 5 statements and he asked me to read one of those statements, viz., the statement of Mr. S. C. Gupta and to copy the same statement and sign my name. I told him that I did not want to make any incorrect statement as I was not present at the time of the delivery of the judgment. He induced me again and again to write the statement similar to the statement of Mr. Gupta explaining his position to me that his service was in danger and it was an enquiry from the District Judge, Meerut. He said if I would give him the statement in writing that would help him very much. The judge told me that as Mr. Gupta who was appearing for the same client as Mr. Swami had given a written statement, it would be no harm if I also give a similar statement in writing and it would harm no one. I went on resisting for 30 to 40 minutes and then I submitted to his request. I got the statement of Mr. Gupta and appended my signature to the copy. Then I left the chambers of the judge. My father-in-law did not send anybody to the chambers of the judge to enquire what I was doing. After I left the chambers of the judge, I went to my father-in-law and told him what I had done. My father-in-law got angry with me. I with my wife was living separate in a house from my father-in-law. When I found that my father-in-law had become angry, I went the same day to the chambers of Mr. Vidyarthi and asked him to return my statement and told him that my father-in-law was very angry with me. Mr. Vidyarthi did not return the statement to me but he said that he would speak to my father-in-law and that the latter would not be displeased with me. Then I went to my home. Two days after this incident I decided to leave Meerut for Bijnor. The next day again I went to Mr. Vidyarthi in his chambers and asked him to return my statement. He, how-



ever, did not return the same to me. He again said that he would speak to my father-in-law. I spoke about the incident to the clerk of my father-in-law and Mr. Daya Prakash Mittal. I left Meerut because my father-in-law got angry with me.

CROSS-EXAMINED BY SIR WAZIR HASAN :—

*Question :* Can you give us the substance of the contents of the writing that you had given to the judge?

*Answer :* It was to the effect that I was present at the time of the delivery of the judgment in the Dhakoli case and the judge did not use the words that he had received instructions from the Chief Justice and that the money was collected simply for the benefit of the wounded soldiers, the best form of charity ; and on a separate chit he also made me to write that my father-in-law was not present at the time of the delivery of the judgment. The writing that I had given was a true copy of the statement written by Mr. Gupta. The statement signed by me was incorrect. As a matter of fact I was not present at the time that the incident happened.

Read and admitted to be correct.

26/9/41.

Sd/. Krishna Swarup Sharma.

Recorded under the supervision of the court.

This statement has been recorded in our presence and our supervision.

Sd/. I. A.

26/9/41.

Sd/. H. J. C.

## MR. K. N. BANERJI

*Statement of Mr. K. N. Banerji, father's name Mr. M. N. Banerji, aged 36, caste Brahman, Pleader, Western Kutcherri Road, Meerut, on S.A.*

I practise in Meerut. I practise mostly in criminal courts. I fully remember the case known as the Dhakoli Murder Case though I had nothing to do with that case. I was not a counsel for either party in that case. I was present in the court of Mr. Vidyarthi on the 31st of July on which date the judgment, I believe, in the Dhakoli Murder Case was delivered. I was, however, not present at the time that the judgment was delivered. I was appearing in a criminal appeal that was fixed for hearing before Mr. Vidyarthi on that date. My appeal was not heard that day. I went to the court-room at the fag-end of the day to enquire whether my case will be taken up. By fag-end of the day I mean that I went to the court of Mr. Vidyarthi after 4 p.m. When I went to the court-room I found money being collected by certain people. The persons collecting the money appeared to be the accused in the Dhakoli Murder Case who had perhaps been acquitted in that case. The money was being collected for war purposes. I was told that the judge had asked for the collection of the money. The money was collected, counted and then placed on the table of the judge. I counted the money. I had no talk personally with Mr. Bonarjee, the District Magistrate, about this matter, nor did I send any message to him. Thereafter I met Mr. Devadas Gandhi and Mr. Bharadwaja at Dr. Dubey's place so far as I remember on the 31st of August. We had a long talk about this incident and other matters while we were sitting at tea together. We talked about the realization of money and so many other things. Thereafter I met Mr. Bharadwaja at Dr. Dubey's place the next day. We did not talk about this incident then. I saw Mr. Akbar Husain after seeing Mr. Gandhi off at about quarter past six on the 31st of August. I met Mr. Akbar Husain that afternoon at a tea party that was arranged in honour of Mr. Marsh-Smith. I spoke to Mr. Akbar Husain about this incident. I told Mr. Akbar Husain about Mr. Gandhi's visit and also said that Mr. Gandhi wanted an affidavit from me. I did not ask the advice of Mr. Akbar Husain in the matter. I narrated the facts to Mr. Akbar Husain in pursuance of the advice given to me by Pt. Surajbal Dikshit who is the President of the Meerut Bar Association. I did not complain against Mr. Devadas Gandhi or Mr. Bharadwaja.

## CROSS-EXAMINED BY SIR WAZIR HASAN :—

Dr. Dubey had asked me to take tea at his place. The object of inviting me to tea was not mentioned to me by Dr. Dubey. I did not discover the object of my being called at the tea party even when I was at the tea party. After the tea was over and when we were coming down to see Mr. Gandhi off I was asked by Mr. Gandhi to give an affidavit concerning the incident of the 31st of July. He did not say specifically what he wanted to be the contents of the affidavit. I told Mr. Akbar Husain that Mr. Devadas Gandhi had come and had made enquiries from me concerning the incident of the 31st of July. Mr. Akbar Husain called me in his chambers the next day. There Mr. Vidyarthi was also present and they asked me what I knew about this incident and I told them. I did not meet Mr. Gandhi after the 31st of August, but Mr. Bharadwaja came to see me on or about the 12th of September. Mr. Bharadwaja came to my house that day. He came to tell me that I would be summoned as a witness. I had no talk about this incident with Mr. Vidyarthi. All the talk that I had with Mr. Vidyarthi about this matter or about the visit of Mr. Gandhi or Mr. Bharadwaja was in the presence of Mr. Akbar Husain.

## TO COURT :—

*Question* : Did you hear the judge, Mr. Vidyarthi, mentioning the Governor or the Chief Justice on the 31st of July, 1941?

*Answer* : I did not.

*Question* : Did it come to your knowledge that a reference to the Governor or the Chief Justice was made by Mr. Vidyarthi on the 31st of July?

*Answer* : Yes.

*Question* : Who told you this?

*Answer* : I do not remember as to who told me. I learnt this in the court-room when I went there.

I know Mr. Surajbal Swami. He is a respectable pleader.

*Question* : Has he any reason to depose falsely against Mr. Vidyarthi?

*Answer* : Absolutely none.

*Question* : Give us the gist of the conversation that you had with Mr. Gandhi and Mr. Bharadwaja at the tea party concerning this incident?

*Answer* : Mr. Gandhi asked me if I considered Mr. Singhal to be a respectable reporter and I said yes. After that he asked me if the incident reported by Mr. Singhal was correct and I said yes. Then he asked me if the money was collected in my presence, and I said that it was collected in my presence. After this we talked about other matters.

*Question* : Did either Mr. Gandhi or Mr. Bharadwaja enquire from you whether Mr. Vidyarthi had made reference to the Governor or the Chief Justice on the 31st of July?

*Answer* : That question was never pointedly put to me.

*Question* : What do you mean by pointedly?

*Answer* : I mean that that question was never put to me in that form.

I hey asked me whether there was a talk about a circular from the Chief Justice and I said yes.

*Question* : Were you told on the 31st of July that Mr. Vidyarthi had said in court that there was a circular from the Chief Justice?

*Answer* : Yes.

I do not remember the gentleman who told me about this.

*Question* : Are you aware that even Mr. Singhal does not state that Mr. Vidyarthi mentioned that a circular had been issued by the Chief Justice?

*Answer* : I know it now after reading the evidence of Mr. Singhal

I read the evidence of Mr. Singhal when it came out in the papers.

*Question* : Why did you in particular count the notes?

*Answer* : I only helped the accused in counting the notes.

I do not know whether any counsel of those accused in the Dhakoli Murder Case were there. There were only four accused whose money I counted.

*Question* : Do you realize that it was a strange conduct on your part to meddle into the affair?

*Answer* : I did not consider anything unusual in it.

I am an acquaintance of Dr. Dubey. My acquaintance with Dr. Dubey dates back to about 5 or 6 years. That acquaintance has not developed into friendship. When Dr. Dubey came to invite me to tea he did not tell me that he wanted me to meet Mr. Gandhi and Mr. Bharadwaja. I did not enquire from him as to why the tea party was being held. There were only four persons present at the tea party, viz. Dr. Dubey, Mr. Gandhi, Mr. Bharadwaja and myself. Immediately after the tea party Mr. Gandhi left.

RE-EXAMINED BY SIR T. B. SAPRU :—

On the day that this thing happened in the court of Mr. Vid-yarthi we had a tea party in our club where amongst others Mr. Bonarjee was present. There we talked about the incident of realization of money in court.

TO COURT :—

I first attended the tea party of Dr. Dubey and after seeing Mr. Gandhi off I went to the tea party that was held in honour of Mr. Marsh-Smith the same afternoon and it was there that I met Mr. Akbar Husain.

Read and admitted to be correct.

27-10-'41.

Sd/. K. N. Banerji.

This statement has been recorded in our presence and under our supervision.

Sd/. I. A.

27/10/41,

Sd./ H. J. C.

## MR. SURAJBAL DIKSHIT

*Statement of Mr. Surajbal Dikshit, aged about 70, Advocate, Meerut, on S. A. :—*

I am an advocate practising at Meerut since 1898 or 1899. I hold the title of Rai Bahadur. I am the president of the Meerut Bar Association. On September 2, 1941, I asked Dr. Dubey to call Mr. Devadas Gandhi if he would be kind enough to come. Dr. Dubey said that perhaps Mr. Gandhi may not be able to come as he is a busy gentleman, but he could send for Mr. Bharadwaja who was Mr. Gandhi's right hand. The next day Dr. Dubey informed me that Mr. Bharadwaja had come and that he would come over to my place at any time that would be convenient to me. Mr. Bharadwaja came over to my place some time in the afternoon of September 3 and he was accompanied by several gentlemen including Dr. Dubey and some other professors and gentlemen. The occasion for calling Mr. Gandhi and Mr. Bharadwaja was that on September 1 there was rumour in the Bar Room that Mr. Vidyarthi had confessed every thing to Mr. Akbar Husain and on this I thought that if that is the truth then the whole thing must at once be confessed before the Hon'ble High Court. As there were conflicting rumours in the Bar Room as to the words uttered by Mr. Vidyarthi I approached Mr. Vidyarthi himself and asked him as to what he had stated before the District Judge and he told me that he had admitted his mistake in collecting money for war funds in open court from the persons who had been acquitted and that he had expressed his regret and apologized to the District Judge. I definitely asked him if he had admitted anything about the circular or his Excellency the Governor or his Lordship the Chief Justice and he said it is all false. I believe it was on September 2 that I spoke to Mr. Vidyarthi. When Mr. Vidyarthi told me all this then I asked him as to whether there was any truth in the rumour that there was a circular or that there was any instruction from the Hon'ble High Court to the judicial officers and he said that it was utterly false. Thereupon when I came to the Bar Room I learnt that Mr. Gandhi and Mr. Bharadwaja were staying with Professor Dubey. Considering, therefore, that possibly they might have heard the rumour that Mr. Vidyarthi had admitted the fact of his having made reference to the circular, to his Excellency the Governor and to his Lordship the Chief Justice I at once drove to

Professor Dubey's place but there I understand that both Mr. Gandhi and Mr. Bharadwaja had left Meerut, and, as such, I asked Dr. Dubey to call Mr. Gandhi so that I may inform him of the real truth. On September 3 when Mr. Bharadwaja with a number of his friends came to my place, I at once realized that those gentlemen were brought in with a view to figure as witnesses with regard to the meeting at my place. I told Mr. Bharadwaja that even though Mr. Vidyarthi was a Hindu, he was not connected with me in any manner. He was not even my caste fellow. I also told Mr. Bharadwaja that the *Hindustan Times* was a very prominent paper if not of my province at least of the adjoining province of Delhi and was also run by Hindus. I, therefore, told Mr. Bharadwaja that there could be no reason for me to favour the one and to disfavour the other. I now understand that Mr. Vidyarthi is a Vaish and Mr. Gandhi is also a Vaish. I told Mr. Bharadwaja that I had particularly called him because I did not want these proceedings to be protracted before the Hon'ble High Court and wanted to inform him that it is a definite and positive fact that no such circular was ever issued nor any instruction was ever given to any judicial officer. Mr. Bharadwaja thereupon told me and he was supported by Professor Dubey that he was convinced that there was a circular or a letter from the High Court and that he and Professor Dubey would feel very grateful if a copy or a photograph of that letter could be obtained. I said that I am giving first-hand information and I do not know why you do not believe me that a circular or letter never existed and is not in existence and no copy or photograph of the same could possibly be obtained. I do not know why Mr. Bharadwaja had deposed before the Hon'ble High Court that I told him that a copy of that circular was impracticable. I told him definitely that no such letter or circular existed.

**Question :** Did you suggest to Mr. Bharadwaja some way out of the situation?

**Answer :** I definitely told Mr. Bharadwaja that Mr. Vidyarthi like a gentleman had gone and admitted his mistake before the District Judge and apologized for his mistake in collecting money and you now definitely know that there is no such circular or instruction issued to judicial officers by the Hon'ble High Court and, therefore, the right course for you would be to go like

a gentleman and submit unconditional apology to the Hon'ble High Court for having repeated false statement without verifying its truth.

Mr. Bharadwaja said that no apology will be submitted because he and Mr. Gandhi were convinced that there was a circular or instruction. I then told Mr. Bharadwaja that the matter was at an end so far as I was concerned because he (Mr. Bharadwaja) was not prepared to submit an apology. When these gentlemen were leaving my place, Mr. Bharadwaja gave me a parting thrust saying that if I could reconsider over the thing he would be staying for the night in Meerut. What I understood him to mean was that if I could supply him a copy of the circular then he would stay at Meerut for the night. I told him that his staying would be useless.

*Question :* Did you tell Dr. Dubey or Mr. Bharadwaja that something should be done to save Mr. Vidyarthi?

*Answer :* Most certainly not. Mr. Vidyarthi was not on his trial as no notice had been issued to him.

I did not advise Mr. Vidyarthi to do anything in the matter, but I was told by Mr. Vidyarthi that he was asked and he intended to go to the Hon'ble High Court and I told him that he should better consult the lawyers before he saw the Hon'ble the Chief Justice. I told Mr. Bharadwaja and Dr. Dubey that it would be impossible for them to get lawyers to depose to their version of the facts for the simple reason that till then no lawyer had ever told me that Mr. Vidyarthi had made reference to a circular or to his Excellency the Governor or to his Lordship the Chief Justice or to any letter or instruction.

#### CROSS-EXAMINATION BY SIR T. B. SAPRU :—

On the last occasion when this case was heard in this Court I appeared as counsel for Mr. Vidyarthi.

#### *Note by the Court :*

Before Mr. Surajbal Dikshit stepped into the witness-box Sir Syed Wazir Hasan, who is the leading counsel on behalf of Mr. Vidyarthi, asked the permission of the Court to allow Mr. Dikshit to retire from the case and the permission was granted,



I was engaged by Mr. Vidyarthi three or four days before the last hearing of this case. Mr. Vidyarthi expected me to conduct the case if the Hon'ble High Court would permit, but when I found that Sir Wazir Hasan was engaged in the case and was senior counsel to me, I simply sat down with him and watched the case and gave him instructions when necessary. I had communicated to Mr. Vidyarthi what had passed between me and Mr. Bharadwaja. It was after that that I was offered the brief and brought here. I did not at that time realize that I might be an important witness in the case. I expected that the gentlemen who will figure as witnesses will speak the truth. At the last hearing when Mr. Bharadwaja was examined in this Court, I for the first time realized that I will have to figure as a witness in these proceedings. In fact, Sir Syed Wazir Hasan then informed the Court that he will have to produce me as a witness.

*Note by the Court :*

It is a fact that during the progress of the statement of Mr. Bharadwaja, Sir Wazir Hasan informed the Court that Mr. Dikshit will have to be examined by him as a witness.

After a while when Mr. Bharadwaja started giving evidence about me I was asked by Sir Syed Wazir Hasan with the permission of the Hon'ble Court to retire and then I walked out of the court room even though Sir Tej Bahadur said that he did not mind my presence in the court room. I did not tell Sir Wazir Hasan before the case was taken up on the last date of hearing all that had passed between me and Mr. Bharadwaja because I thought that Mr. Bharadwaja or Mr. Dubey will make reference to the interview with me. The statements I have made today were put to Mr. Bharadwaja and Dr. Dubey; indeed I hurriedly noted the questions and passed them on to Sir Syed Wazir Hasan while he was cross-examining those witnesses.

*Question :* Why was not any question about the circular or the letter or about the photograph put to Dr. Dubey or to Mr. Bharadwaja?

*Answer :* As far as I remember the questions were put to both of them and Professor Dubey said that Mr. Dikshit definitely and positively said that there was no circular and no letter.

I suppose it was on the 2nd September that for the first time I saw Mr. Vidyarthi in connection with this matter. I saw Mr. Vidyarthi in his chambers. On the 2nd September Mr. Vidyarthi told me all that he had stated to Mr. Akbar Husain. Mr. Vidyarthi never asked me to call Mr. Gandhi or Mr. Bharadwaja from Delhi. I did not advise Mr. Vidyarthi to see the Hon'ble the Chief Justice or the Registrar. He himself told me that he was advised to see the Hon'ble the Chief Justice. I believe there is a Hindu Sabha at Meerut. I am the President of the Sanatan Dharam Aushdhalya. I am the Secretary of this Association and not the President.

*Question :* I put it to you again whether you are connected with the Hindu Sabha either as an official or as a member?

*Answer :* Not that I know of. In fact there are so many institutions of which I am either member, President or Secretary that there is barely any with which I am not connected, but I exactly do not remember being connected with Hindu Sabha in any way.

*Question :* I put it to you that the Hindu Sabha is a powerful Hindu organization and that if you are connected with it you ought to remember it and if you are not connected with it you ought similarly to remember it?

*Answer :* I am definite that I am not connected as a member or an office-bearer with the Hindu Sabha.

I realised that if the allegations made in the news item were proved to be true, it would be serious from the point of view of Mr. Vidyarthi, as to have spoken of a thing which never existed was a serious matter. I did not ask Mr. Bharadwaja as to why he said that there was a circular issued by the High Court. I never spoke to the correspondent of the *Hindustan Times* about the matter.

*Witness volunteered :* I spoke to Dr. Dubey and Mr. Bharadwaja in my capacity as President of the Bar Association at Meerut and secondly as a member of the Provincial War Committee. I thought that if these proceedings are protracted they will be detrimental to war efforts.

I never asked Dr. Dubey to persuade Mr. Bharadwaja to apologize. Why should I? I had no conversation with any other judicial officer at Meerut about this matter.

*Question :* Will you please tell us as precisely as possible what Mr. Vidyarthi told you about having spoken to Mr. Akbar Husain?

*Answer :* As far as I remember Mr. Vidyarthi told me that he had admitted before the District Judge that in the Dhakoli murder case he asked for money as charity for the wounded soldiers or their families and some money was collected in the court room after the judgment had been pronounced. He said something like that, and then on my question he said that there was no admission or mention whatever about his having spoken of a circular or his Excellency the Governor or his Lordship the Chief Justice. In the course of the conversation that I had with Mr. Bharadwaja I did throw out a suggestion about calling Mr. Vidyarthi, but I at once realized my mistake, as when Mr. Bharadwaja was not prepared to believe me he might not have even believed Mr. Vidyarthi and thus I would have put Mr. Vidyarthi in an awkward position. Mr. Vidyarthi perhaps saw me on the morning of the 3rd September at my house. He lives practically opposite to my house. I told him that I had called Mr. Bharadwaja and would inform Mr. Bharadwaja of the real facts.

*Question :* What reason according to you had Mr. Bharadwaja to believe that you might be able to deliver to him the circular or a photograph of the circular?

*Answer :* My idea is that they were firmly convinced that there was a circular and I may be induced to go to Mr. Vidyarthi and tell him that Mr. Bharadwaja says that there is such a circular and then he might give it. That may be working in his mind.

BY COURT :—

*Question :* Is it a fact that you told Mr. Bharadwaja that “a Hindu Judge was being sacrificed”?

*Answer :* If I may be permitted to say so, it is a big lie. There was no question of a Judge being sacrificed at that time. The matter was only between the *Hindustan Times* and the High Court.

I know Mr. Surajbal Swami. I was present here when he gave his evidence. I heard his evidence.

*Question :* Can you suggest any reason why Mr. Surajbal Swami gave false evidence?

*Answer :* Personally I know of no reason, but subsequent to his statement I have been told of certain things which may be hearsay.

*Question :* Will you please state those things?

*Answer :* I have now come to understand that several years ago Mr. Surajbal Swami was a very enthusiastic Congress worker. I do not know how far that information is correct, but somebody told me that he was perhaps tried and convicted. I am very sorry to say so after Mr. Surajbal Swami in his evidence has given me a good certificate; and as far as I understand he is a gentleman of very strong likes and dislikes and a Judge in his capacity as a Judge may not be able to please everybody at every time.

*Question :* Are you aware of any misunderstanding between Mr. Vidyarthi and Mr. Surajbal Swami?

*Answer :* Not to my knowledge. Mr. Vidyarthi may be able to throw light on this matter.

27-10-41.

Read and admitted to be correct.

Sd. S. DIKSHIT.

This statement has been recorded in our presence and under our supervision.

Sd. I. A.

Sd. H. J. C.

27-10-41.

# MR. HARI SHANKAR VIDYARTHI

## RE-EXAMINED

*Statement of Mr. Hari Shankar Vidyarthi, Civil and Sessions Judge, Meerut, on S.A. :—*

Neither Mr. Singhal nor Mr. Gauri Shankar came to me on the 13th of August, nor on any other date. As I stated before I took the written statements of some of the members of the Bar including that of Mr. Gupta, but I destroyed those statements. Mr. Gupta was summoned as a witness on my behalf, but he told me that a number of his friends at Meerut and he also possibly told me that some of his relations who had come from Delhi, were bringing pressure upon him and were harassing him and insisting that he should not give evidence against the Congress and Mr. Gandhi.

BY THE COURT :—

*Question :* Whose son is Mr. Devadas Gandhi?

*Answer :* He is Mahatma Gandhi's son.

BY SIR TEJ BAHADUR SAPRU :—

No influence was exercised over Mr. Gupta at the time that I summoned him. In his written statement Mr. Gupta had made a positive statement that I had made no reference to His Excellency the Governor or the Chief Justice and he also told me when he wrote the statement that Mr. Banerji had asked him that he should not give evidence against Mr. Gandhi as it will bring some consequences over Mr. Gandhi, but he said that he could not give false evidence to help Mr. Gandhi.

*Question :* When you had a talk with Mr. Gupta the Barrister about pressure being brought to bear on him did he tell you that if he was produced as a witness he will make a false statement against you?

*Answer :* No.

I am aware that Rai Saheb Moti Lal, Government Pleader, was served with a notice to appear as a witness in this Court on my behalf. He is Government Pleader at Meerut. He was appearing in the Dhakoli Murder Case on behalf of the Crown. He is a very respectable lawyer and a man of position in Meerut. I do not remember that Rai Saheb Moti Lal's statement was taken down in writing by me. I know Mr. Surajbal Swami.

*Witness Volunteered :—*

Mr. Moti Lal also came to me on the evening of the 24th of October and said that there had been great propaganda and complaints had been made against him probably to the Commissioner or the Collector and that if he gave evidence against the Congress those complaints will be pressed, otherwise not.

BY THE COURT :—

*Question : Who made those complaints?*

*Answer :* The complaints were made at the instance of some Congress people and he probably also said that his explanation had been called by the Commissioner. The complaints were made to Mr. Bonarjee.

BY SIR TEJ BAHADUR SAPRU :—

*Question : Is it for that reason that you did not insist on Mr. Moti Lal coming in the witness-box?*

*Answer :* I was not present yesterday, but I was told by Mr. Surajbal Dikshit this morning that Rai Saheb Moti Lal refused to give evidence against the Congress.

*Question : Did it strike you after you had these talks with Mr. Gupta and Mr. Moti Lal that it was a very serious thing for the other side to tamper with your witnesses?*

*Answer :* I was in great domestic trouble owing to the death of my elder son who died on the 9th of October.

I did bring all these facts concerning Mr. Moti Lal and Mr. Gupta to the notice of my local counsel Mr. Surajbal Dikshit.

*Question : I suppose your intention was that some step should be taken to prevent the tampering of your witnesses?*

*Answer :* No, I was all alone and the other side was working in hundreds and thousands.

*Question : Can you suggest any reason why this matter was not brought to the notice of the Hon'ble Court?*

*Answer :* I was not present here and they came to me at Meerut with the promise that they would give evidence.

Notwithstanding the pressure they had held out the assurance to me at Meerut that they would support my case. I know Mr. Surajbal Swami. So far as I remember he appeared only in two or three cases before me.

*Question :* Was there any unpleasantness between you and him on those occasions?

*Answer :* He used to ask irrelevant questions and create scenes in court. I prevented him from doing so and he generally lost his temper.

I knew that Mr. Swami was to be produced as a witness in this case on behalf of the other side. I was not in Court on the day that Mr. Swami was examined.

*Question :* Did you bring it to the notice of your counsel that Mr. Swami created scenes in court?

*Answer :* As a matter of fact I never expected that he will give the evidence that he has actually given.

*Question :* From the manner in which Mr. Swami conducted himself in Court have you any reason to believe that he conceived a great dislike for you or was hostile to you?

*Answer :* No, I did not, I never thought that he would go to the extent to which he did go.

I saw Mr. Akbar Husain on September 1. He called me to his chambers. I did not take the written statements of the lawyers before seeing Mr. Akbar Husain as I never knew till then that it was attributed to me that I had made reference to His Excellency the Governor or the Chief Justice. Mr. Banerji was present during part of the conversation that I had with Mr. Akbar Husain. At the time that I was with Mr. Akbar Husain he knew that the charge against me was being levelled that I had made reference to His Excellency the Governor and the Chief Justice in the court room. After I went to the chambers of Mr. Akbar Husain two or three minutes after the commencement of the conversation Mr. Banerji was called in. I do not remember what part of the conversation took place in his presence and what part of the conversation took

place in his absence. I saw Mr. Surajbal Dikshit in this connection, but I do not remember the date on which I saw him. If Mr. Dikshit says that I saw him on September 3, I must have seen him on that date. So far as I remember Mr. Dikshit came to me either on September 1, or 2, and he asked me what the matter was. Then I told him every thing about the conversation with Mr. Akbar Husain. Mr. Dikshit told me that either Mr. Gandhi or Mr. Bharadwaja had given the impression to him that I had made confession to the District Judge that I had made a reference to His Excellency the Governor and the Chief Justice and also about the collection of money for war funds. I told him that the fact that I had collected money for war funds in court was correct and the rest of the allegations were a tissue of lies. He told me that he was calling either Mr. Gandhi or Mr. Bharadwaja to correct their impressions and he, therefore, had either called me or I myself went to his place. I do not remember the date on which either Mr. Gandhi or Mr. Bharadwaja were expected. Mr. Dikshit told me that they had been sent for or would be sent for. I was not anxious but Mr. Dikshit was anxious to remove that impression because he was very much interested in the collection of war funds and he did not want that any fuss should be created. I engaged Mr. Surajbal Dikshit as my counsel about the 20th of September.

BY SIR WAZIR HASAN :—

*Question :* Do you know anything about the political leanings of Mr. Surajbal Swami?

*Answer :* Yes. He is a staunch supporter of the Congress and in the last election to the Legislative Assembly of the United Provinces he supported Pt. Pyare Lal Sharma, a Congress candidate, against Sir Sita Ram.

(*Note :* At this stage Sir Tej Bahadur Sapru stated that he had made enquiries from his clients and he was told that Mr. Surajbal Swami had no connection with the Congress and that he was tried under Section 124-A about the year 1921 and was acquitted).

The assertions of facts contained in the letter of Mr. Singhal



dated August 10, 1941, that has been filed on behalf of the opposite party in this case are wholly untrue.

Read and admitted to be correct.

Sd. Hari Shankar Vidyarthi.

28-10-41.

This statement has been recorded in our presence and under our supervision.

Sd. I. A.

28-10-41

Sd. H J. C.



## **PART III**

### **Appendices**

NEWSPAPER COMMENTS ON CASE  
RESOLUTION OF STANDING COMMITTEE  
OF EDITORS' CONFERENCE  
CONTEMPT OF COURTS ACT  
CHRONOLOGY



## NEWSPAPER COMMENTS ON CASE THE INDIAN EXPRESS

The conviction of Mr. Devadas Gandhi, Editor, *Hindustan Times*, Mr. Sharma, the Printer of the paper, and Mr. Singhal, its Meerut correspondent, on charges of contempt of the Allahabad High Court would hardly come as a surprise to the public. The Chief Justice of that court had indicated his conclusion that the persons to whom notice had been issued were guilty, and public suspense related only to the question of sentence. The correspondent has now been awarded a prison sentence while the Editor and the Printer have had substantial fines imposed on them with provisions for default. If, as has been reported, Mr. Devadas Gandhi has decided not to pay the fine, we will witness the phenomenon of the Editor of an influential organ of the Indian Press having to go to jail by way of purging his contempt of the judicial authority of a High Court. It may be added that the Editor is the Vice-President of the Indian and Eastern Newspaper Society and an important member of the All-India Newspaper Editors' Conference. If the convictions are sustained by adequate evidence exception can only be taken to the sentences awarded. But a scrutiny of the testimony on which they are based makes it doubtful if the conclusions of the judges are warranted by the facts, and would indicate that there has been miscarriage of justice. In fact, Mr. Devadas Gandhi, apparently impelled by a strong sense of the injustice done, blurted out in court after orders had been pronounced that "it is a matter of sorrow and pain to me that I have failed to convince this honourable court of the truth of the evidence of my eyes and ears and such other evidence which I have produced and in which I have the same belief as I would have in the evidence of my eyes and ears."

It is well, therefore, to recall the facts which led to these contempt proceedings. The *Hindustan Times* had in its issue of August 5 published an editorial note commencing with "If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmed, in his administrative capacity has issued a circular to the judicial officers under his jurisdiction enjoining on them to raise contributions to the war funds then it must be said that he has done a thing which would lower the prestige of the courts in the eyes of the people." The note then proceeded to point out the dangers of the presiding officers of courts taking on themselves the work of war fund collections. It ended with the statement that "it was bad enough that the services of members of the Executive were utilized for the purpose but to make judicial officers do this work is something worse." This note was based on the report of Mr. Singhal, the Meerut correspondent of the paper, which contained the statement that "the judicial officers all over the province have been, I

reliably learn, asked by the new Chief Justice of the Allahabad High Court who, it is understood, has been requested by his Excellency the Governor for co-operation in war efforts to raise subscriptions for the war funds." Called on to show cause why they should not be convicted for contempt, affidavits were filed by Mr. Devadas Gandhi and Mr. Sharma which specifically alleged that Mr. Hari Shankar Vidyarthi, Additional Sessions Judge of Meerut, had, in a murder trial, after convicting four of the accused, stated in open court that the Chief Justice, at the request of H.E. the Governor, issued instructions to the subordinate courts to raise subscriptions for war funds and he, accordingly, appealed to the persons present to help him in the work. A sum of money was, accordingly, collected from the remaining accused concerning whom orders of acquittal were thereafter passed.

No such circular appears, in fact, to have been issued by Sir Iqbal Ahmed, the Chief Justice, and the only question for decision which then arose was whether Mr. Vidyarthi had in fact uttered the words attributed to him. Admittedly, Mr. Vidyarthi had collected money for the Governor's War Purposes Fund from some of the acquitted accused though he alleged that he did the collection work after orders of the acquittal had been passed by him and not at any earlier stage. It is also common ground that Mr. Vidyarthi had after the publication of the *Hindustan Times* comment taken statements from some lawyers in his court concerning what had happened. These statements are said to have been destroyed and in any event they have not been made available. Also Mr. Vidyarthi had never reported the matter to the High Court or put himself in communication with the Chief Justice. These circumstances make it necessary to scrutinize Mr. Vidyarthi's emphatic denial that he had uttered the statement attributed to him with considerable reserve and not to accept any part of his evidence in the absence of independent corroborative testimony. It must be confessed that sufficient weight has not been given by the Allahabad judges to these aspects and their finding in his favour on the vital question at issue is vitiated by the wrong standpoint from which they have examined the evidence.

Considerable stress has been laid in the order on the fact that Mr. Singhal had not reported to his newspaper the "very remarkable utterance" ascribed to Mr. Vidyarthi. Mr. Singhal, in fact, appears to be well known to Mr. Vidyarthi and it is beyond dispute that after the trouble commenced there was an attempt at an interview between the two. There is nothing surprising in Mr. Singhal not sending a report of such an extraordinary action on the part of a judicial officer, who is no stranger to him, and tactfully enough he confined himself to a general report of the war fund work of judicial officers. Nor has the learned Chief Justice given any margin to the position

and authority wielded by a person holding the post of a District Judge and the difficulties to which members of the Bar are put in alleging anything against the presiding officers of their courts. Undue significance has been laid on the stage at which Mr. Vidyarthi started on war fund collection work. Further, it is not easy to follow the argument that, while Mr. Vidyarthi might have used the name of H.E. the Governor for his appeal, it is unlikely that he reinforced it by invoking the authority of the Chief Justice. It is much more likely that an over-zealous judicial officer, embarking from his place in court on an enterprise entirely outside the scope of his work, would have invoked the authority of the judicial head of the province than of its executive chief. In fact, the allegation is that he had used both these names, and, admittedly, the money was collected from persons tried before him on a charge of murder before they had left court.

If Mr. Vidyarthi's evidence is to be ignored what remains in his favour? The case of the *Hindustan Times* is supported by the direct testimony, among others, of Mr. Singhal, Mr. Surajbal Swami and Mr. K. N. Banerji, advocates, Mr. Bharadwaja and Mr. Dubey, not to speak of the evidence of Mr. Gandhi himself, and by intrinsic probabilities. The learned judges brush aside their testimony and stress the alleged unsatisfactory demeanour in the witness-box of some of them. Yet these witnesses are men of education and it is not obvious how demeanour counts. In any event there appears to be no justification for the positive finding that "Mr. Vidyarthi did not give utterance to the words attributed to him" and that the respondents had failed to establish a case which they had set up.

Mr. Devadas Gandhi went as far as he could by expressing regret, a feeling which would be shared by all. But there could be no question of an apology, in the circumstances. While the authority of courts has to be respected and maintained, the duty of the Press as a guardian of public interests has also to be discharged. Mr. Devadas Gandhi and his two associates will have the sympathy of the public in their present position and they will doubtless be sustained by the feeling that though the arm of the law has struck at them they had only acted in what they had done in the best interests of the public and as vigilant custodians of the rights of the Press.

*Madras, 16-11-41.*

## THE NATIONAL HERALD

A trial for a contempt of court is vitiated by the fact that the judges themselves are the prosecutors and so long as this grave defect remains, it violates one of the first principles of jurisprudence, namely, that the accused and convicted person should feel as convinced about the fairness of the sentence awarded to him as any other person not directly concerned with it. In the case of the *Hindustan Times* at the Allahabad High Court, we regret to say that we have to underline our disagreement with every word of that section of the judgment which deals with their lordships' valuation of the evidence for the defence, which they condemn as manufactured. We are convinced to the contrary, and we have no doubt in our mind that the accused made out a sufficiently strong case to prove the truth of the correspondent's report about the collection of war funds in the court of Mr. Vidyarthi at Meerut and all that happened there, and consequently, the correctness of the editorial note which was written on the basis of the report.

We are surprised that after seeing Mr. Devadas Gandhi in court and hearing his statement, their lordships should have thought that the evidence produced in support of the defence was manufactured. Mr. Devadas Gandhi is not the man afraid of going to jail—the Gandhis are not made that way. We must express equal surprise at the line of reasoning adopted by the judges in referring to the action of Mr. Vidyarthi. They admit that he acted in a very unwise and misguided manner after seeing the news item in the paper regarding collection of the war funds at a certain stage of a criminal case before him, even as they admit, in the earlier part of their judgment, that Mr. Vidyarthi was, to say the least, highly ill-advised to collect subscription "in this manner while sitting in court as a judge." They even observe that the evidence produced by the two sides before them clashed and contradicted at more than one place. If it was a question of going by possibilities and probabilities, then the benefit of the speculation might as well be given to the accused as to the other side. And all the time their lordships had before them Mr. Devadas Gandhi's statement that his motive in printing the news paragraph and the editorial comment was to maintain the reputation of the High Court and the purity of the administration of justice. He should have been taken at his word.

Mr. Singhal, the paper's Meerut correspondent, was charged by the court with not having revealed the source of his information and with not having dealt straight with the judge of Meerut. We would respectfully point out to their lordships that if they had been intimately familiar with the conditions in which Press correspondents work and have got to work, they would not have permitted themselves this somewhat inaccurate reflection. In any case, the editorial comment of the *Hindustan Times* could not have been



more carefully written. That comment was based on honest assumption and legitimate conjecture. It was not the purpose of the writer, contrary to what their lordships infer in their judgment, to make imputations against the Chief Justice of subservience to the Governor, but to draw the attention of the Chief Justice to the danger of judges and law courts getting mixed up with political controversy and the drive of the executive for war fund collections.

We would further remark that once Mr. Devadas Gandhi admitted his error so far as the sending out, as alleged, of a circular by the High Court to the lower courts in connection with the war fund was concerned, there was no further need to proceed with the case. Nor did the circumstances call for an apology—an apology in those circumstances in which Mr. Devadas Gandhi was placed would have been very insincere, to say the least. The ends of justice would have been indeed better served if, in the first instance, the attention of the Editor had been called by the registrar of the High Court to the offending paragraph and the offending comment, and if a flat contradiction had been issued of the alleged sending out of a circular. The formidable machinery of contempt of court proceedings might well have not been used at all.

We note that throughout the proceedings of the trial the learned Chief Justice showed very serious concern for the absolute independence of the judiciary of the executive. To his lordship it appeared, and rightly too, monstrous that anyone should think that in matters relating to the administration of justice and control of the law courts, there should be any body, a rival, parallel or superior authority, that can be in a position to suggest, much less to dictate, a course of conduct or a line of action contrary to settled procedure and established precedent. It is all to the good. In thus trying to reiterate one of the classic principles that concern the government of the State, his lordship was not laying too much emphasis on that principle, and that at a time when the atmosphere is charged with the dynamics of political controversy. May we make an humble suggestion to his lordship in this connection? The courts should be circularized, in unmistakable language, that they should keep themselves clear of the war effort and the judges should have nothing to do with it except to the extent of paying a subscription of their own if they feel they must. Not a speech must be made by them, in fact not a word must be uttered by them for this purpose. If the judiciary is to remain independent, and above suspicion, we must pursue the logic of the implications of the *Hindustan Times* contempt of court case. But are we not, as a matter of fact, aware of speeches by Governors of provinces shouting at the top of their voices that it is the duty of every public servant to help in the organization and successful fruition of the war effort? What does that mean? Are not judges public servants? Are they

or are they not expected to take an active part in the war effort? Is it anything but natural, though it may be unfortunate, that judges like Mr. Vidyarthi should carry their zeal to the point of indiscretion? But can that be helped when the voice of the mighty rends the sky?

This aspect of the judgment of the Allahabad High Court must be considered to be both opportune and well warranted by the circumstances of the day. We would reiterate our view that in attempting to keep the springs of justice pure and undefiled by the turbid atmosphere around, their lordships can depend upon the good sense as well as the active co-operation of the Press and the public of this province.

*Lucknow, 16-11-41.*

## THE BOMBAY CHRONICLE

The judgment of the Chief Justice and Mr. Justice Collister of the Allahabad High Court in what is known as the *Hindustan Times* contempt court case raises several important issues about the rights and risks of the Press. The case arose out of a news item published in the *Hindustan Times* in August last on the collection of funds for war in the Sessions Court of Meerut. The news item stated *inter alia*: "The judicial officers all over the province have been, I reliably learn, asked by the new Chief Justice of the Allahabad High Court, who, it is understood, has been requested by his Excellency the Governor, for co-operation in war efforts, to raise subscriptions for the war funds." Commenting on the whole news item the editorial comment stated: "If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction enjoining on them to raise contributions to the war funds, then it must be said that he has done a thing which would lower the prestige of the courts in the eyes of the people." Their lordships have held that the suggestion in the editorial comment read with the news item is that the Chief Justice, at the instance of the head of the executive, is interfering with the course of justice in the lower courts, inasmuch as the persons asked by the judge under orders from the Chief Justice to contribute money will have no alternative but to comply as, otherwise, they may incur the disfavour of the judge to their own detriment. The probable effect of the news item and the editorial comment, their lordships think, will be to impair the authority of the High Court, to lower its dignity and its prestige and seriously to shake public confidence in the administration of justice. The publication of the editorial comment calculated to have this effect, they hold, is a clear contempt of court.

This is an obvious legalist view of the case. And the Editor, Mr. Devadas Gandhi, himself stated in the course of the trial that he was "extremely sorry" for the publication of the offending expressions. But their lordships, while admitting that "this may amount to an expression of regret," held that it was "not an apology, which is the word in the Contempt of Courts Act." But surely, commonsense should suggest that words admittedly expressing regret cannot be discussed as not being an apology just because they do not contain the word "apology". And merely because this word is used in the Act it does not necessarily follow that every apology must contain that very word and that no equivalent will do. Secondly, in view of the expression of regret the sentences inflicted are needlessly harsh. Their lordships justify the harshness by remarking: "We do not feel justified in awarding a light sentence of fine for we are satisfied from the evidence that they have manufactured evidence for the purpose of their defence." The evidence was necessary to justify or extenuate many things said or done

by the respondents, quite apart from the amazing revelations of public importance the evidence made possible. Mr. Devadas Gandhi has done well to prefer imprisonment to paying the fine on the ground that Mr. Singhal, his Meerut correspondent, has not been allowed the option of fine.

That leads us to the worst feature of the case. When the Editor and the Printer accepted full responsibility for the publication of the offending passages there was no need for the court to drag into the case the Meerut correspondent even if law permitted such a procedure. The correspondent merely supplied material for publication, leaving it to the Editor or his deputy to judge whether in any particular case the material should be published in full or in part or not at all. Even if the correspondent consciously or carelessly supplied incorrect material, he is answerable to his employer for that material. But, in any case the Editor, the Publisher and Printer are responsible for the final publication. If the correspondent also is to be made responsible for it, there may be no end to the process of spreading the responsibility, and to the risk thereby incurred by journalists. The conviction of a correspondent is, to our mind, unjust and unfair, and an additional menace to the Press.

*Bombay, 17-11-41.*

## HINDUSTHAN STANDARD

*After briefly tracing the history of the case the paper says:—*

Their lordships have acted according to law. Yet it is difficult to resist the feeling that things need not have taken the turn they have. So far as Mr. Gandhi and Mr. Sharma are concerned, their lordships "acquitted them of malice towards the Chief Justice" and "accepted the statement of Mr. Gandhi and Mr. Bharadwaja that up to then they had had full confidence in Mr. Singhal and had never had reason to suspect the truth or accuracy of his report." Their lordships also conceded that Mr. Singhal's report "was probably founded either on his own inference from what took place in court (the raising of subscriptions to the war fund by the presiding judge from the accused persons in a pending case) or on a suggestion from other persons." Mr. Gandhi, in addition, had openly stated that he was "extremely sorry" for what had happened and their lordships conceded that "this may amount to an expression of regret." In consideration of all these, their lordships might have condoned the act as an indiscreet one at the worst, arising out of a misunderstanding but committed in good faith "to maintain", as Mr. Gandhi said, "the reputation of the High Court and the purity of the administration of justice". It is regrettable that their lordships were unable to take such a view of the matter. It is still more regrettable that they took too legalistic a view and demanded compliance with the letter of the law which demands an "apology" and gives no express direction that "expression of regret" may be accepted as a suitable substitute for apology. The judges of the High Court, we believe, have ample authority to interpret the law; in the present case the judges might have accepted the regret in the spirit in which it was expressed. We think the dignity of the High Court would have suffered no damage if Mr. Gandhi's expression of regret had been accepted and the matter had been dropped at that.

*Calcutta, 18-11-41.*

## THE SIND OBSERVER

In the mouth of any person who had followed the *Hindustan Times* contempt case closely the conduct of the Additional Sessions Judge, Meerut, leaves a very bad taste. If we accept his statement that he did so after the pronouncement, even then it is highly improper. But he might have felt he would

A gentleman whose conduct has been described by the High Court as "unwise, highly ill-advised, and misguided" does not deserve to occupy the position of a judge, and the U.P. Government and the High Court ought to take serious notice of his conduct.

One of the reasons why the *Hindustan Times* published the Meerut letter and wrote a moderate and dignified comment was that it had become the common talk that such things were happening and formed also the subject of interpellations in certain legislatures. No affront to the Chief Justice was intended and he was only requested to put a stop to such things, if there was truth in them, as the fountain of justice must flow purely. Assuming such a circular was issued—we take the Chief Justice of Allahabad's word that he had never issued it—it would be difficult for a public newspaper to carry on correspondence with him to which he might not even care to reply. If a newspaper is honestly satisfied that there is something wrong, as in this case—Mr. Vidyarthi did after all collect the money—it commits no wrong and stands honourably acquitted in the eyes of the profession of journalism whatever the law of contempt and its interpretation.

The Chief Justice was alleged to have issued the circular, which is not true; even then it would have conduced to the creation of greater public confidence in the conduct of this case if his Lordship himself did not sit to try it but referred it to other judges. In the Allahabad High Court there are more judges than six or eight.

There is another peculiar feature of the case which deserves some attention. At a very early stage of the case his Lordship the Chief Justice expressed the view to Sir Tej Bahadur Sapru, counsel for Mr. Devadas Gandhi, that the letter and the comment were clear contempt of court—let us say *per se* defamatory of the High Court—and it was no use arguing that point. We thought that the case would end soon after the pronouncement of this opinion and the judgment be delivered, but the case was given many hearings on account of the evidence brought forward by the defence, and Mr. Vidyarthi, who was also examined. As laymen, we may permit ourselves to ask whether there was any use of proceeding with the case at all when at a very early stage the Court's opinion was made known to the accused.

That leads us to our main point which we have reserved to the last. Without casting any aspersion on the honour, the integrity

and high sense of duty of the Judges of the High Courts, we, who belong to the profession of journalism, have yet to be satisfied in India that we would get any justice in any contempt of court case where the complainant is also the judge and the executioner. The question is not whether the High Court is wrong or unjust. The High Court may be acting according to its best and purest lights. And, after all, judges too are humans, and not angels. The public must be convinced that in cases of this nature pure and unadulterated justice is being done to the man in the dock. No such conviction exists.

We have to make two suggestions. The first is that the judge, who is aggrieved, should not himself sit to try the case. Secondly, if an accused person makes an application to the local government in a contempt of court case it must be transferred to be tried in any other High Court, which the Government of India on the recommendation of the local government may be pleased to direct.

These contempt cases are few and far between. It speaks well of the Press and the public that they respect the dignity of the High Courts; it speaks better of the High Courts concerned that they are not hasty in launching such cases. But the grievances and the fear are still there of any person accused of contempt, newspaper editor or a member of the public, that he is engaged in an unequal contest. We are concerned only with the contempt of the High Courts, but not of the courts subordinate to them. In the case of the latter we are certain the High Courts would do impartial justice.

*Karachi, 18-11-41.*

## THE NATIONAL CALL

In a case of this character where the highest judicial authority sits in judgment on its own complaint, there is bound to be an element of embarrassment on the part of any critic of that judgment on its merits. But we must state that after the Editor had expressed his regrets for that part of the news and the comment, which according to their lordships amounted to contempt, the insistence on the use of the word apology could be only justified by a meticulous regard for the letter of the law. In the light of the above any penalty must seem excessive.

But if the case has attracted wide public attention, it is not because of the element of contempt involved in it, since that aspect so far as the public was concerned had been disposed of after the Editor had expressed regret. Its importance lay in the fact that for the first time a scandalous state of affairs had been brought to the notice of the public and the High Court, namely, the practice of certain judicial officers of collecting funds from accused or discharged persons, even in court. So far as this accusation is concerned Mr. Devadas Gandhi and his colleagues stand completely vindicated in the eyes of the public as well as in the eyes of their lordships. To this extent they have done a great service to the cause of justice in the United Provinces and to the country.

The judgment clearly shows how jealous his lordship the Chief Justice and his colleagues are of the dignity and prestige of the High Court and of the machinery of justice in their province. The question naturally arises as to whether a mere public castigation of the conduct of Mr. Vidyarthi was sufficient, or something more is necessary to prevent the misuse by subordinate judicial officers of their position for extra-judicial purposes.

We do not know what the view of their lordships would be in the matter but from a purely administrative point of view and in the interests of justice it is undesirable for judicial officers to become fund collectors, whether those funds are required for war purposes, for the Boy Scout Movement or for any other philanthropic or charitable purpose. It is undeniable that a sense of obligation is inseparable from a donation and is, therefore, in conflict with the purity of justice. The fact also cannot be ignored that when collections are made in court, especially from acquitted persons, it would appear as if acquitted persons had some obligation to the judge.

We, therefore, forcefully urge that their lordships in their discretion should take such action against Mr. Vidyarthi which will act as a deterrent to misguided zeal and indiscretion on the part of subordinate members of the judiciary calculated to lower the dignity and to shatter public confidence in the administration of justice.

*Delhi, 19-11-41.*



## NAGPUR TIMES

The Chief Justice of the Allahabad High Court and Mr. Justice Collister have found Mr. Devadas Gandhi, Editor, Mr. Devi Prasad Sharma, Printer, and Mr. Singhal, the Meerut correspondent, of the *Hindustan Times*, guilty of contempt of court. The Editor was sentenced to pay a fine of Rs. 1,000 or, in default, one month's simple imprisonment, the Printer to pay a fine of Rs. 500 or, in default, one month's simple imprisonment, and the correspondent was sentenced to two months' simple imprisonment without the option of paying fine. These sentences strike one as unduly severe, especially after the expression of regret by Mr. Devadas Gandhi and after the finding of the High Court that Mr. Vidyarthi, the Meerut Judge, was "highly ill-advised to collect subscriptions in this manner while sitting in court as a judge." There is yet another reason why a light and lenient sentence would have served the purpose. In cases of contempt of themselves, judicial traditions would demand extreme carefulness and caution on the part of judges.

Mr. Singhal is not allowed the option of fine, perhaps because he was the author of the original report. The position arising out of this sentence is an addition to the long list of risks which correspondents have to court in the course of doing their duty. But once an editor accepts the correspondent's report, the responsibility legally should shift to the shoulders of the editor. Mr. Singhal said on oath that his report was true and his editor was convinced of it. Every editor has, in the course of the rush of his daily work, largely to depend upon the reports of correspondents. Verification before publication is often impossible, especially when time is of utmost importance. And where reports come from usually reliable correspondents, the editor has to accept them and run the risk as Mr. Devadas Gandhi has done in this case. By declaring his intention to stand by his correspondent and go to jail rather than pay the fine and escape imprisonment, Mr. Devadas Gandhi has not only maintained the noblest traditions of journalism but also has set a golden standard for the profession. The severity of the sentence only shows the enormity of the risks to which we of this profession are constantly exposed. Mr. Devadas Gandhi has done a service to the public in that he has drawn pointed attention to the fact of a judge collecting money in court from "some of the accused persons on July 31 after their acquittal" which the High Court has characterized as "ill-advised". Directing attention to this fact has meant courting risks. The Press has always to be in the firing line and so is exposed to the largest number of risks. And these risks the Press faces with fortitude and cheerfulness.

## THE SEARCHLIGHT

Pending fuller study of the judgment in the contempt of court case against the Editor, the Printer and Publisher, and the Meerut correspondent, of the *Hindustan Times*, we had expressed the opinion that the sentence passed on the accused by the Hon'ble the Chief Justice and Mr. Justice Collister of the Allahabad High Court was astoundingly severe and was quite disproportionate to the alleged offence, considering the circumstances of the case. The study of the judgment since does not incline us to revise that opinion. We are afraid their Lordships have taken a more serious and narrower view of things than they need have, particularly because Mr. Devadas Gandhi, the Editor, had admitted his error at the very outset so far as the suggestion of sending out a circular by the Chief Justice for the collection of subscription by the judges of the lower courts was concerned, and had expressed his regret. As we said in our previous note, the offended court themselves being the judge in a case of contempt, the judges cannot be anything but extremely careful in the judgment they pronounce and the sentences they pass. We had in this connection referred to Pandit Motilal's observation in the course of his arguments in the *Searchlight* Contempt Case that there was a very thin line of demarcation that divided the vanity of a judge from the dignity of the court and that, therefore, the Court should be particularly careful in dealing with cases of contempt. Unfortunately, portions of the judgment in the present case as well as the severity of the sentence passed do leave behind an impression that their Lordships might have taken a more considerate view of the circumstances of the case.

We are afraid we are treading on very delicate ground and far be it from us to suggest anything derogatory to their Lordships. It is apparent that they were fully convinced of the guilt of the accused and that if they had pronounced the judgment or passed the sentence that they did, it was because they felt that the evidence before them left them no choice whatsoever. What we say here is, therefore, not intended in any way to cast any reflection upon them. A perusal of the judgment, however, creates the impression in us that while their Lordships may have been wholly in the right in the assessment of the value of the evidence tendered before them on behalf of the accused, any one who studies the portion of their judgment dealing with the evidence cannot but feel that they have been rather narrow in their interpretation of facts and in their appraisal of the evidence tendered before them. For instance, they say that Mr. Singhal was corroborated in regard to the alleged interview of August 13 by Mr. Gauri Shankar, but they rejected the evidence of the latter by saying that they were "not in any way impressed by this witness." Again, they say that they were unfavourably impressed by the demeanour of Mr. Dubey who had

supported the respondents as regards the interviews with Mr. K. N. Banerji and with Rai Bahadur Pandit Surajbal Dikshit. Not only this, the judgment makes it clear that in their Lordships' view the evidence of officials and semi-officials—for instance, of Mr. Akbar Husain, the District Judge, and of Rai Bahadur Surajbal Dikshit, the Public Prosecutor—apparently carried more weight with them than the evidence of the defence witnesses including Mr. Bharadwaja, the Assistant Editor of the *Hindustan Times*, who were all non-officials, for while they discuss at length their reasons for accepting or not accepting the latter, they do little of the kind with regard to the former. We do not suggest that their Lordships were wrong in the conclusions they arrived at, but to an ordinary reader of their judgment it does appear that the evidence of the defence witnesses deserved a better appreciation and, in any case, we respectfully submit it should not have led their Lordships to the observation which they made while dealing with the question of the award of a light or heavy sentence on the Editor and the Publisher that they "were satisfied from the evidence that they have manufactured evidence for the purposes of their defence." It is true that there was discrepancy between the evidence of the defence witnesses and that of the official witnesses and, on the whole, it was a case of oath against oath. But in a case like this, where a part of the allegation was correct, namely, that war subscriptions had been collected from some of the accused in a Sessions case and their Lordships had themselves admitted that the Sessions Judge was not quite well-advised either in collecting the subscriptions or in taking the statements of pleaders to refute the allegations against him, the obviously right course would have been, we may venture to submit most respectfully, to give the benefit of the conflicting evidence to the accused.

We hope their Lordships of the Allahabad High Court will take the opportunity provided by this case to issue a warning to this effect to their subordinate officers in the same way in which the Hon'ble the Chief Justice of the Patna High Court has instructed the judicial officers under this Hon'ble Court, to refrain from indulging in any activity regarding collection of subscriptions and things of the kind. If that be the result of the case, Mr. Devadas's suffering may not have been in vain. From that point of view, Mr. Devadas cannot but deserve the highest praise for rendering a great public service, though one may regret that circumstances should have made him the victim of a statement that was not true.

*Patna, 19-11-41.*

## THE INDIAN NATION

At the end of a prolonged and sensational trial, Mr. Devadas Gandhi, Editor of the *Hindustan Times*, Mr. Sharma, the Printer and Publisher of that paper, and Mr. Singhal, its Meerut correspondent, have been convicted and sentenced for contempt of court by the Allahabad High Court. On their very face, the sentences will appear rather heavy and out of proportion to the offence of the accused. From the trend of the proceedings and from a perusal of the judgment, it will be clear that the correspondent's offence was the non-verification of the actual words used by Mr. Vidyarthi, the Additional Sessions Judge of Meerut, in collecting subscriptions for war funds from certain persons, who were standing trial before him. That he did collect funds for the war in open court has been admitted in evidence by him and accepted as a fact by the honourable Judges of the High Court themselves.

There is a general and widespread feeling that the High Courts in India, as the bulwarks of individual and public rights against executive encroachments or otherwise, should be offered all possible co-operation in the discharge of their onerous and responsible work. But in cases in which editors of newspapers are hauled up for contempt of court, it would appear essential that High Courts should display a considerable amount of leniency in the determination of the guilt of the accused persons. For, without the least intention to bring the courts into contempt, something may be published which may remotely have that effect. Their Lordships of the Allahabad High Court held, quite correctly from the purely legal standpoint, that the effect of the statements made should be the deciding factor in a case of contempt. But we may respectfully point out that intention and motive too should be accorded adequate weight in a matter of this kind and the benefit of doubt should be given to the accused wherever possible. The *Hindustan Times* case was one of the occasions in which the Allahabad High Court could easily have taken a more lenient attitude than it actually did in view of the extenuating circumstances referred to. The sentence on the correspondent is particularly heavy, especially when the Editor had taken upon himself the responsibility for the publication of the news-item and the comment based thereon. Once again the case testifies that there is but a thin line, a very thin line, that divides the zones of safety and danger within which editors of newspapers in the country have to function *vis-a-vis* the law of contempt. Where our High Courts are inclined to be fastidious in matters which involve criticism of their decisions or of the actions of individual judges, the danger line becomes blurred altogether with a corresponding increase in the danger to the persons concerned.

## THE AMRITA BAZAR PATRIKA

We do not propose to offer anything like an elaborate comment on the judgment of the Allahabad High Court in what is known as the *Hindustan Times* contempt case. The case is of great importance to the Press and affects its rights and responsibilities. We of the daily Press know under what high pressure we have to work from day to day. We have to depend very largely on reports supplied to us by our correspondents, and where the correspondents happen to be experienced men who have earned the confidence of the papers by long and faithful service, reports supplied by them have got to be accepted, particularly when they are of public interest.

We have followed the proceedings before the High Court with great interest and were led to believe from the evidence and circumstances, particularly having regard to the expression of regret that Mr. Devadas Gandhi offered, that their lordships would be satisfied by conveying a warning to the accused persons. It has, therefore, been a great shock and surprise to us that the sentences have been anything but lenient.

We take this opportunity to pay our tribute of respect to Mr. Devadas Gandhi, the editor, who preferred to go to jail rather than pay the fine imposed on him because Mr. Singhal, the reporter in question, was sentenced to imprisonment without any option of paying fine. The accused persons behaved with great dignity throughout the proceedings and we can give them the assurance that their fellow-journalists all over India have not the least doubt that they had done nothing to forfeit their confidence and that they had acted in conformity with the best traditions of independent journalism.

*Calcutta, 16-11-41.*

## THE LIGHT HOUSE

We congratulate Mr. Devadas Gandhi on his decision to prefer one month's jail to the payment of a fine of one thousand rupees in the sentence awarded to him in the case known as the *Hindustan Times* contempt of court case. One of the necessary and inseparable incidents in the life of a working journalist in a subject country like India is the preparedness to lead the jail life; that is the price usually paid for the freedom of speech or writing. Therefore we offer our congratulations to our brother in the profession, and also to Mr. Radhey Lal Singhal who has been awarded two months' imprisonment and no option of fine in default. The law is no respecter of persons, and justice is administered according to law in our law courts. These sentences, however, by no means lower our fellow-workers in the profession in the estimation of their countrymen and are likely on the other hand to put them higher in that profession in respect of their dignity, prestige and the due discharge of duty."

*Meerut, 29 11-41.*

## THE HINDU

The proceedings in the *Hindustan Times* contempt case have been productive of one good result. The Chief Justice has, according to the *United Press of India*, circularized the subordinate judiciary of the Province on the question of members of the service taking part in war fund collections. The circular begins by saying that "there is not the slightest objection to a judicial officer himself subscribing to war funds or to his being associated with members of the Executive or members of the public in their endeavours to raise such funds provided such endeavours have no connection whatsoever with his position as judge." The obligation, which the proviso thus enjoins, rests on the wholesome general principle that the power, prestige and influence that go with any public office of authority should not be so used as to coerce or overawe any private individual (or body) into giving a subscription for any such purpose against his wish, since otherwise the voluntary character of such contributions would disappear and they would be really irregular levies. It is this consideration that is at the back of the widespread objection to officials of any department or description making these war fund collections and the demand that the practice of so employing them should cease. Officials making war fund collections, far from wishing to compel anybody to pay, may in each case take special pains to impress it upon the person whom they approach with a request for a contribution that it is entirely voluntary and it is perfectly open to him to refuse to give. But, human nature being what it is, few persons, especially among the illiterate villagers of the countryside, will have the courage to turn down a request which, coming as it does from an official with whom they may have constant business, they cannot but interpret as a command. Nor can it be supposed that all officials will, in these circumstances, exercise such iron self-restraint as to give no room for complaint, especially when they are being constantly reminded by higher authority that they are not pulling their weight. From this point of view the undesirability of employing any public servant in this manner is obvious.

In the case of judicial officers the objection becomes much more serious. The U.P. Chief Justice's circular, after premising that it would be difficult to lay down a general rule, points out that "it would be manifestly improper for a judge to endeavour to raise subscriptions or be associated with the raising of subscriptions from persons who are in any way parties to judicial proceedings." For to do so might, suggests the circular, lead to members of the public thinking that "subscription or non-subscription to the war fund would affect the independence and impartiality of the judicial officers"—which the Chief Justice emphasizes he is "determined to do all in his power to prevent." In other words his Lordship recognizes—and

rightly, if we may say so—that the independence and impartiality of judicial officers must be not only unassailable but above suspicion. In this respect judicial officers have got to be even more careful than members of other branches of the public service. Since they constantly function as umpires between contending private interests, the danger is all the greater of their integrity being called in question if any business not connected with their office—such as war fund collections—should throw them into unnecessary contact with members of the public, whether actual or potential clients, who might thus get a pretext for going about saying that, by paying a contribution on the judge's solicitation, they had secured his goodwill. It is, therefore, not enough to direct, as the circular does, that judicial officers shall not collect subscriptions from persons who are involved in judicial proceedings actually going on before them. Every member of the public is a potential client, so far as judicial officers are concerned, and so in their case the rule of non-participation in war fund collections and similar activities must be made absolute if the confidence of the public in the judiciary is to be maintained unimpaired.

We are afraid that the bifurcation of personality sought to be effected by the circular, in distinguishing between the duty of a judge in his capacity as judge and his duty "as a member of society with corresponding obligations like any other citizen," is impossible in practice, since though a judge may ask for a subscription as a private individual, his neighbour whom he approaches for such a purpose will not make such nice distinctions. So far from regarding such detachment as possible, the Government have provided, under the Government Servants' Conduct Rules, that officers (in any department) are responsible for even the political opinions of their wife, children and other dependants! Society expects a specially rigorous code of conduct from the judiciary and, in token of this, confers on the holder of judicial office special dignities and privileges and the law punishes with drastic severity any attempt on the part of a private person to lower the judiciary in the esteem of the public. That argues a corresponding obligation on the part of members of the judiciary not to do anything which might be reasonably likely to have the effect of damaging them in the eyes of the public.

*Madras, 30-11-41.*



## THE STATES PEOPLE

Devadas Gandhi and his colleagues of the *Hindustan Times* have filled the horizon of politics for the past two or three months. At last the clouds that had hovered over them have cleared but thunder and lightning have descended upon them. The contempt of the highest court was duly evaluated and fines varying from Rs. 500 to Rs. 1000 were imposed with alternative sentences in two cases and an additional sentence in the third, of imprisonment. The brave Editor, setting aside the conventions of courts, addressed the Chief Justice and said that he would prefer to go to jail to tendering the fine, as all the accused had not been treated equally. This is but in tune with an earlier statement made by Devadas when he was asked to disclose the writer's name. He said he would rather take the whole responsibility upon him than disclose the name of the writer of the article under indictment. That laid down a high order of journalistic ethics and editorial duty. We are not acquainted with the intricacies of law, but we fail to see how it would be contempt of court to say that a high officer has urged war collections. The High Courts of India are not working as collaterals of the Indian National Congress to be sure! And if, in the alternative, they represent, as they must and do, the British Government, then they have, in accelerating war effort, done only what various executive officers are doing openly and with impunity. Is it not strange then that you should find fault with people for saying that you have done your duty?

*Bombay, 2-12-41.*

# THE HINDUSTAN TIMES

## *Law And Procedure*

### I

In spite of the grave issues involved in the judgment delivered by the Allahabad High Court in what is known as the *Hindustan Times* contempt case, we had so far refrained from commenting because it would be manifestly unfair to their Lordships that any attempt should be made to criticize their judgment before the full text of it became available. Now that the full text of the judgment delivered by their Lordships, the Chief Justice and Mr. Justice Collister, has been published, not only ourselves but the public as a whole have all the material necessary to enable them to judge for themselves how far, on the basis of the evidence at the disposal of their Lordships, their verdict was justified and how far Mr. Devadas Gandhi, the Editor of this paper, Mr. Devi Prasad Sharma, the Printer and Publisher, and Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*, were justified in the stand they took. We need hardly state that, so far as this paper was concerned and so far as the three respondents were concerned, they were all animated by the single object of doing what they considered to be a supreme public duty, and never for a moment was any one of them troubled by the thought as to what was to happen to himself as a result of the proceedings started against them. Journalism in this country has few rewards, but imposes on its votaries many trials and tribulations, and it is because journalists in India have accepted that position as a privilege conferred on them, instead of making it a grievance, that we need have no fears about the future of the Freedom of the Press in this country.

In contempt proceedings, accused persons are always under a handicap as one judge becomes prosecutor and judge rolled into one, in violation of one of the elementary principles of jurisprudence. And where the contempt alleged is not against the administration of justice in general but against a particular judge, the handicap under which an accused person labours becomes greater when he is tried by that particular judge. In ordinary cases, it is a common experience for judges to refuse to try cases in which they may be even remotely interested, and there is no reason why in contempt cases, either by an amendment of the law or by the observance of a convention, judges should not leave trials of persons accused of contempt against themselves to other judges. This is all the more essential, as one of the accepted canons of justice is that not only must justice be done but that the public must appreciate that justice is being done. The present practice asks the judge to play a very difficult role in contempt cases in which the alleged contempt refers to himself or the court over which he presides; but even under present circum-

starces, it is possible for judges to give a feeling of confidence to those charged with contempt, that they are getting an impartial and fair trial, if, throughout the proceedings, they preserve the judicial frame of mind, subordinating the role of the prosecutor to that of the judge. How far that has been done in the present case is a question in answering which we have no desire to be dogmatic, though we may have our own opinion. In the proceedings of the case published by us, the public have ample material to answer the question for themselves. In the notice issued to the Editor and the Printer, who were the two persons against whom proceedings were started in the first instance, they were asked "to show cause why they should not be dealt with for contempt of court," the fact of contempt being assumed. On the very first day of hearing after both Mr. Devadas Gandhi and Mr. Devi Prasad Sharma had filed their affidavits, the verdict went against both the accused, though judgment was reserved. Later, the whole case was practically retried, because of Mr. Vidyarthi's denial of the allegations contained in the affidavits. But throughout, the respondents suffered from the handicap of having to face a situation in which the Chief Justice had already made up his mind as to their guilt. Here is a reversal of the principle that no man shall be held guilty until he is proved to be guilty in a court of law. In contempt cases, guilt is assumed and the onus of proving his innocence is placed on the accused person. To some extent, what happened in the present case may, perhaps, be inevitable in view of the nature of the charge brought against the respondents. But the same cannot be said about the allegations made by Mr. Devadas Gandhi in his affidavit, which, according to Sir Tej Bahadur Sapru, counsel appearing on behalf of the respondents, "disclosed a story the like of which had, probably, never been heard in this court." One of the allegations made in the affidavit, to which Sir Tej Bahadur referred in his opening address, was that war fund collections were started by Mr. Vidyarthi in his court after four of the accused in the "Dhakoli murder case" had been convicted and before the order of acquittal of the other accused was made. As soon as Sir Tej Bahadur Sapru referred to the allegation, this is what happened:

*Chief Justice:* The whole judgment must have been read.

*Sir T. B. Sapru:* According to the affidavit before me, four men were transported, and at this stage the judge decided to make these observations and when the money was handed over, the rest of the judgment was either read out or the substance given out.

*Chief Justice:* I find it very difficult to accept this story. When the judge was delivering judgment in a case in which there were 20 accused, he would, in the same breath, say so many

are convicted and so many acquitted, and I cannot believe that after saying that four persons are transported for life, he would not say anything more with regard to the rest.

It may be that the final finding of the High Court, that Mr. Vidyarthi did not deliver the judgment piecemeal, as was alleged in the affidavit, is based on a careful consideration of the evidence tendered in the case—this is a point which we shall take up later on—but how is an accused person to be satisfied that he is having a fair trial when one opinion is expressed before any evidence is tendered and the same conclusion is reached after all the evidence has been considered. Unless the judge trying a case keeps an open mind till the very end, the accused is not likely to feel the confidence that he is getting a fair trial.

Since editors of newspapers figure largely in contempt proceedings, these are matters which concern the Press as a whole rather than this particular paper. It would be interesting to know whether in other contempt cases also the accused editors had the same feeling as we have, that the combination of the role of prosecutor and judge in the trying court prevents the case put up by the defence being given the consideration it deserves, and must get. Our own feeling, born of recent experience, is that both law and procedure are defective in this respect, and the initiative in the agitation to amend both must come from the Press, as it is the Press which feels the present unsatisfactory state of affairs the most.

*Mr. Vidyarthi's Words*

II

There are two aspects of the case which, though connected with each other, must be kept separate, if the issues involved are to be understood correctly. One concerned the defence of Mr. Devadas Gandhi and the other respondents, and the other the wider question of the circumstances in which war fund collections took place in the court of Mr. Vidyarthi, the Second Additional Sessions Judge of Meerut. If this paper was interested in the first, the wider public and the High Court itself, as the guardian of the purity of administration of justice, must be vitally interested in the second. It also became clear, once the story disclosed in the affidavit came to our knowledge, that important as was the first aspect of defence against the charge of contempt, the second aspect was immeasurably more important, and, consequently, the first must take a subordinate place in the further proceedings. There was nothing in it for regret then, and there is nothing for us to regret now that we know what the outcome of the proceedings is.

To take up the first aspect, first. The news item sent by our Meerut correspondent on which our comment was based, stated that judicial officers had been asked by the Chief Justice, at the request of his Excellency the Governor, for co-operation in war efforts. In the comment based on the news, which became the subject-matter of proceedings, it was assumed that these instructions must have been in the form of a circular. On the very first day of hearing, his Lordship the Chief Justice stated that no circular had been issued and the case could be argued on that basis. The mistake about the circular did not make the offence—if offence there was—more serious than what it would be, if it was merely stated that instructions had been issued. It was admitted that, if the allegation in the affidavit about what Mr. Vidyarthi said in open court before collecting war funds, were proved, it would constitute a mitigating circumstance, though the offence of contempt would still remain, as the repetition of a false story carried with it as much responsibility as the originating of it. We may even go further and claim that, if the allegation had been proved, it would have constituted a very good, if not complete, defence, as neither our Meerut correspondent nor ourselves could imagine that one in the position of an Additional Sessions Judge would be telling an untruth in a matter concerning instructions from the Chief Justice. The offence would, in that event, have become a mere technical one, demanding nothing more than a nominal punishment. Consequently, a great deal depended on what Mr. Vidyarthi actually said. Mr. Devadas Gandhi said in his affidavit that these were Mr. Vidyarthi's words:

Since the Chief Justice, who has been requested by his Excellency the Governor to help in the war efforts, has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work.

Whether Mr. Vidyarthi actually used these words or not was an issue of great importance in the case. Now a great deal has been said about the conflict of testimony in this respect. Where much of evidence is oral and not documentary, a certain amount of discrepancy, and even conflict, is inevitable. The words "lie" and "liar" have been bandied about, but it is as well to bear in mind the distinction between the white lies of which most of us are guilty in our ordinary lives and the guilt of those who are prepared to perjure themselves after being placed on oath. Hearsay evidence, we have all heard, is no evidence. If that dictum had been applied in the present case, much of the testimony to which their Lordships attached varying degrees of importance would have been eliminated. Only those who were present in the court of Mr. Vidyarthi could be expected to bear witness to the fact whether Mr. Vidyarthi actually used these words or not. For the defence, a number of witnesses were produced who stated that they were present in the

court of Mr. Vidyarthi at the time and had actually heard him use these words. Of these, the first was Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*. It must be remembered in this connection that till the day he actually came forward to give evidence on behalf of Mr. Devadas Gandhi and Mr. Devi Prasad Sharma, no notice was served on him and he had not become a respondent in the case. Consequently, his evidence has to be judged like that of any other witness and not like that of an accused defending himself. The second witness who stated that he was present in court was Mr. Attar Singh, a *pairokar* in the Dhakoli murder case on behalf of the complainants, and he confirmed the story of the previous witness as to the words used by Mr. Vidyarthi. The third witness who testified to the actual words used by Mr. Vidyarthi was Mr. Surajbal Swami, one of the lawyers appearing on behalf of the acquitted accused in the murder case. He was positive that the judge had used the words mentioned, and he added that that was the truth.

Now, as against the evidence of these witnesses who were actually present in court and testified that Mr. Vidyarthi used the words alleged, what was the evidence produced by Mr. Vidyarthi? Firstly, there is his own denial that he used the words attributed to him. After what happened on the first day of hearing, Mr. Vidyarthi knew what the consequences to himself would be if the High Court found that he had actually used these words and, consequently, he could not be expected to admit them, even though he might have mentioned the names of the Chief Justice and the Governor. Secondly, there is the evidence of Mr. Akbar Husain, the District Judge of Meerut. But since he was not present in court and he could only testify as to what Mr. Vidyarthi had told him, his evidence can carry only as much weight as Mr. Vidyarthi's own denial, and nothing more. The third witness produced who testified to Mr. Vidyarthi's version of the story was Rai Bahadur Surajbal Dikshit, President of the Meerut Bar Association and a leading criminal lawyer. He also was not present in the court at the time, and his testimony also referred to what Mr. Vidyarthi had told him and, consequently, can have no greater value than Mr. Vidyarthi's denial. In addition, it must be remembered in the case of this witness that he had been briefed by Mr. Vidyarthi, and it was only for the purpose of giving evidence on behalf of Mr. Vidyarthi that he retired from the case and entered the witness-box. Thus we reach the position that as against three witnesses who heard Mr. Vidyarthi say what he did in court, we have only Mr. Vidyarthi's bare denial of the allegation. There were other persons present in court at the time; but such of them as were summoned by Mr. Vidyarthi, he did not produce in the court.

In the face of such evidence, it is astonishing that their lordships should have come to the conclusion, not only that the respondents had failed to establish the case set up by them but that Mr. Vidyarthi did not give utterance to the words attributed to him. Mr. Singhal's evidence is disposed of by their lordships as that of one who could not be relied on to tell the truth. To the aspect of the case so far as it concerns him, we shall come later. Mr. Attar Singh's evidence is discounted, because he happens to be related to the two murdered men for which crime the accused persons had been prosecuted in the Dhakoli murder case. Mr. Surajbal Swami's evidence is sought to be discounted, firstly, because he has an ungovernable temper and, secondly, because he was said to have an animus against Mr. Vidyarthi, to which Mr. Vidyarthi had testified. But the remarkable thing about the animus story is that it was never put to the witness in his cross-examination. To dispose of the evidence of witnesses who actually heard Mr. Vidyarthi say what he did in this manner, and on grounds which appeared to be scarcely convincing, and then accept the denial of Mr. Vidyarthi, the person most interested in the matter, does not seem either justifiable or reasonable, but that is what the High Court has done. If the evidence of those who heard him in court is to be disbelieved, for some reason or another, it was open to their lordships to summon others who were present in court and find out the truth. This was all the more essential, as what was in dispute was not only the reference to the Chief Justice and the Governor but also the actual circumstances in which war funds were collected and in which, as we stated before, the High Court must be more interested than the respondents. In the absence of any such attempt to arrive at the truth, their lordships might have held that the respondents had failed to establish the truth of the allegation about what Mr. Vidyarthi had said, in which case the respondents would have got the benefit of the doubt. But on the basis of Mr. Vidyarthi's denial—there was no single witness who was present in the court and who said that Mr. Vidyarthi had not uttered the words attributed to him—to hold as their lordships held, that Mr. Vidyarthi did not say what he was alleged to have said was to make a miscarriage of justice unavoidable.

One point of paramount importance to which Sir Tej Bahadur Sapru referred in his arguments but to which no reference is made by their lordships in their judgment is the difficulty in a case of this nature for private parties to secure the testimony of eye-witnesses. Lawyers and litigants are not likely to come forward to testify against a judge in whose court they have been appearing and may appear again. That, in spite of this fact, some witnesses did come forward is as much a tribute to their courage as to their anxiety to help the court in establishing the truth. To our profound regret, this aspect of the matter was completely ignored by their lordships.

*What Was The Offence?*

## III

The next question which arises for consideration is whether the item of news published by us from our Meerut correspondent and the editorial comment based on it constitute contempt of court, and if so how. The contempt did not lie in the circulation of an incorrect report about the circular, as an indirect report by itself will not constitute contempt. If what was objectionable was the suggestion about association of judicial officers in war efforts, there can be, and there are, two opinions about it. We have held, and we still hold, the opinion that such association cannot be conducive to the impartial administration of justice, but there are others who hold the contrary opinion. For example, the Chief Judge of the Oudh Chief Court presided over a meeting of the members of the Oudh Bar Association on August 21, 1940, and a substantial sum was collected towards war loans. If it was right and permissible for him to do this, surely it cannot be wrong for him to ask other judicial officers to follow his example. If it was wrongly alleged that the Chief Judge had asked judicial officers to do so, that might be regrettable but would not convert the offence into one of contempt.

What then constituted the offence of contempt which their lordships found had been established against the three respondents? In their judgment their lordships sum up the impression which "an ordinary intelligent reader" would receive from reading the editorial comment thus:

It (the comment) contains a clear insinuation that the Chief Justice has issued a circular to all judicial officers to raise contributions from litigants and others to the war fund, that pressure was thereby being exerted by an authority which "it would not be safe to displease," and that the prestige of the courts would thus be impaired. The implication is that the Chief Justice had done something unworthy of a person holding that high office and that as the head and representative of this High Court he had committed the gross impropriety of forcing judicial officers subordinate to this court to ask for war contributions from litigants who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse.

Their lordships also proceeded to refer to the existence of a political controversy as to the propriety or otherwise of contributing to the war effort and the publication in question having the effect of dragging the Chief Justice, as such, into this political controversy. They also held that there was an insinuation in the present case that the Chief Justice was acting under the influence of the Executive. In



conclusion they state:

The suggestion in the editorial comment of August 6, read with the news item of August 3, was that the Chief Justice, at the instance of the Head of the Executive, was interfering with the course of justice in the lower courts inasmuch as the persons asked by the judge (under orders from the Chief Justice) to contribute money would have no alternative but to comply, otherwise they might incur the disfavour of the judge to their own detriment. The probable effect of the news item and the editorial comment would be to impair the authority of this court, to lower its dignity and prestige and seriously to shake public confidence in the administration of justice. The publication of an editorial comment calculated to have this effect is a clear contempt of court and it is unnecessary to quote authority.

Now the "ordinary intelligent reader" to whom their Lordships refer is, perhaps, as mythical a being as the "economic man" to whom economists attribute all sorts of virtue. But he will be neither ordinary nor intelligent if either from the news item or from the editorial comment he draws the inference that "the Chief Justice had issued a circular to all judicial officers to raise contributions from litigants (and others) to the war fund." The news item merely referred to judicial officers being asked by the Chief Justice "for co-operation in war" efforts to raise subscriptions for war funds." The editorial comment in referring to litigants referred to the possible abuses likely to creep in in subordinate courts as a result of the circular, not that the Chief Justice had asked judicial officers to collect war funds from litigants by using unfair means. There was no insinuation either in the news or the comment that judicial officers were being "forced" to collect war funds from litigants. The reference in the editorial comment to "one whom it may not be safe to displease" was also to the possibility of subordinate judicial officers being displeased with those refusing to subscribe, and not to the Chief Justice, who was merely alleged to have asked for co-operation in war efforts. In short, there was no insinuation either in the news or the comment that the Chief Justice in asking for the co-operation of subordinate judicial officers suggested to them that they should do so by illegal or improper means. If the suggestion of resort to improper methods is also not there, what then remains to make the publications actionable for contempt? Their Lordships have also referred to the political controversy about the collection of war funds and state that the effect of the publications would be to drag the Chief Justice as such into that controversy. As regards this, we have already stated that this is a matter on which there can be two opinions and if a Chief Court Judge can with propriety associate himself with collection of contributions to war loans it cannot constitute contempt to say that the Chief Justice

of a High Court has done so, though the report itself may be wrong. Lastly, the judgment refers to the insinuation that "the Chief Justice was acting under the influence of the Executive." The words "who had been requested by his Excellency the Governor" occur only in the news item and not in the comment. To allege that the Judiciary is being influenced by the Executive is, no doubt, contempt and their Lordships have fortified themselves in their judgment in taking up this position by referring to the *Amrita Bazar Patrika* contempt case. But the point at issue in the present case is whether a request by the Governor for co-operation in the collection of war funds would amount to an insinuation of the Executive influencing the Judiciary.

In answering that question, it is necessary for us to refer to a subsequent development, relevant to the point raised in the question. One would have thought, after the admissions made by Mr. Vidyarthi as to the manner in which he made war fund collections and the strictures passed on his conduct by their Lordships in the judgment, that the lesson of the whole case would be the dangers inherent in the association of judicial officers with war fund collections. But curiously enough, the case appears to have produced the contrary effect. The charge on which the editor, the printer and the Meerut correspondent of this paper have been convicted is that they published a report about an alleged circular issued by the Chief Justice of the Allahabad High Court to subordinate judicial officers asking for their co-operation in making war fund collections. But after the conclusion of the case, the Registrar of the Allahabad High Court issued a circular to all district judges as "desired by the Chief Justice" concerning the position of judicial officers in relation to the war effort. In the course of this circular occurs the following remarkable sentence:

There is not the slightest objection to a judicial officer himself subscribing to the War Purposes Fund or to *his being associated with members of the Executive* or with the members of the public in their endeavours to raise such funds, provided that such endeavours have no connection whatsoever with his position as a judge. (Italics ours.)

Now, bearing in mind the qualification mentioned in the circular let us envisage the position which would arise in a district headquarters town. There will be no objection to the District Judge subscribing to war funds. There will be no objection to his association with the District Magistrate or with other members of the public in collecting such funds, outside the court. In such a situation, if the District Magistrate requests the District Judge "for co-operation in war efforts, to raise subscriptions to war funds," will there be anything wrong in it? Since association in raising war funds is permissible, clearly, according to the circular issued on the authority of the Chief Justice, there will be nothing wrong in the request. If it is right for a District

Magistrate to request the co-operation of the District Judge in the collection of war funds, why should it be wrong for his Excellency the Governor to request the Chief Justice of a High Court for co-operation in war fund collections? The High Court may be a court superior to the District Court, but no one contends that there is any difference in the nature of the justice administered in the two courts or what constitutes contempt in the case of one would not constitute contempt in the case of another. The circular issued by the Registrar, on the authority of the Chief Justice of the Allahabad High Court, completely exonerates the respondents on the charge of contempt, so far as the charge was based on the alleged insinuation about the Executive influencing the Judiciary.

There is another remarkable circumstance with reference to the Lordships' finding of contempt being established against the three respondents to which we feel bound to draw attention. Though in the comment and the news published there is no justification for it, their Lordships maintain that "in the comment and the news there was the suggestion that the Chief Justice was interfering with the course of justice in the lower courts inasmuch as the persons asked by the Judge (under orders from the Chief Justice) to contribute money would have no alternative but to comply; otherwise, they might incur the disfavour of the judge to their own detriment." They then proceed to state that the probable effect of the editorial comment would be "to impair the authority of this court, to lower its dignity and prestige and seriously to shake public confidence in the administration of justice" and that this is clear contempt of court. Side by side with this indictment of the three respondents, let us see what Mr. Vidyanthi did at Meerut on his own showing. He collected war funds in court, not from mere litigants but accused persons in murder cases, after, according to him, he had read out the operative part of the judgment. Two of the witnesses for the respondents have borne testimony to the feeling of the accused persons when this "request" for subscribing to war funds was made by the Judge. Here is what Mr. Attar Singh stated: "When these four (accused persons) came before him, the Judge asked them to give subscriptions for the war fund. One of them kept quiet for some time and then he said, 'We have been sufficiently looted.'" Here is an extract from Mr. Surajbal Swami's evidence, as reported in the Press: "He (witness) discussed the matter (request for subscriptions to war funds) with the Judge and another lawyer present there. The lawyer told witness, that his clients would have to pay Rs. 300. Witness, thereupon, remarked that he was not engaged by them to have them hanged in this manner." That was what the accused called upon to subscribe to war funds felt and anyone with the least sense of humanity cannot but sympathize with their feeling. If to insinuate—as the three respondents are held to have insinuated—that the Chief Justice had asked subordinate judicial officers to collect subscriptions for war funds from litigants is

contempt for which two of the respondents are in prison and one has paid a heavy fine, we ask, and the public are entitled to ask, whether it does or does not constitute contempt to collect war funds from accused in murder cases who, according to Mr. Vidyarthi, had just been acquitted and who had not had time even to walk out of the courts. What the respondents had been held to insinuate Mr. Vidyarthi had converted into an accomplished fact, and still, and still, the verdict of the highest tribunal in this land is that the editor of this paper should purge his contempt by being imprisoned for a month and its correspondent by being in prison for two, while for Mr. Vidyarthi was reserved only the stricture that he was "highly ill-advised" and that he acted in "an unwise and misguided manner." As between the respondents and Mr. Vidyarthi, we would like to know, and the public are entitled to know, who is more guilty, in the words of their Lordships, of "impairing the authority of courts, lowering their dignity and prestige, and shaking public confidence in the administration of justice."

*War Fund Collections*

IV

We come now to the second, and from the point of view of the public the more important aspect of the case, connected with war fund collections. As we have already stated, once the circumstances in which war funds were collected by Mr. Vidyarthi, the Second Additional Sessions Judge of Meerut, came to our notice, we realized that though much of it was not relevant to the defence in the case, those circumstances must be brought to the notice of the High Court. Since the only way in which it could be done was to include the story in his sworn affidavit, Mr. Devadas Gandhi did so, after satisfying himself, so far as was humanly possible, of the truth of the allegations made in it. In the course of the proceedings, mention was often made of the positive case of the respondents and there was the tacit assumption that it was for them to prove the allegations to the satisfaction of their Lordships. This was true so far as Mr. Vidyarthi's reference to the Chief Justice and the Governor was concerned, as it was vital to the defence to establish the exact words used by Mr. Vidyarthi. But as regards the other allegations made in the affidavit, about the manner in which war fund collections were made, they should not have been looked upon as matters regarding which there was an obligation on the respondents to establish their truth. Mr. Devadas Gandhi did, indeed, offer to help the court in finding out the truth so far as in him lay, as he was bound to, after making the allegations. It seemed to us then, and it seems to us now, that once those allegations had been made by one in the responsible position of the Editor of a newspaper of the standing of the *Hindustan Times*—and it must be remembered that those allegations were made not wantonly or on his own initiative, but in the course of defending himself from the

charge of contempt of court brought against him—it became a matter in which the High Court, as the supreme guardian of the purity of administration of justice, should be more interested than the respondents themselves. If that attitude had been assumed by the High Court from the very beginning, we are sure the whole case would have taken an altogether different turn from the one it actually took. We would, in this connection, like to point out that neither the *Hindustan Times* nor the three respondents had or have any personal animus against Mr. Vidyarthi. In fact, there was no mention of Mr. Vidyarthi or his activities in connection with the collection of war funds in this paper till the time came for us to defend ourselves against the charge of contempt, even though our Meerut correspondent was fully aware of these activities.

As to what happened in the court of Mr. Vidyarthi on July 31, 1941, on the day when he pronounced judgment in the Dhakoli murder case, we shall consider the circumstances in two parts. Part of the story was admitted by Mr. Vidyarthi when he was examined in court and the other portion was denied by him. On his own admission, he made an appeal for subscriptions for war funds, by way of charity to help wounded soldiers, in court after he had delivered the operative part of the judgment convicting four accused and acquitting the others, in the Dhakoli murder case. "Operative part" means the part of the judgment referring to convictions and acquittals and, consequently, his own implied admission is that the judgment had not been delivered in full. A certain amount was collected by lawyers from their clients, the accused in the murder case. We have already referred to the feeling of disgust and bitterness this caused among lawyers and accused in that murder case. Mr. Vidyarthi also confessed to making similar collections in another criminal case before. That one in the position of a Sessions Judge should have resorted to such methods to collect war funds would have appeared incredible but for the fact that these were Mr. Vidyarthi's own admissions. Whether this conduct on the part of a judge presiding over judicial proceedings in a murder case is or is not likely "to impair the authority of the court, to lower its dignity and prestige and seriously to shake public confidence in the administration of justice"—the indictment brought against the respondents by the High Court—is now for the higher court of public opinion to judge.

But this is not all. Mr. Devadas Gandhi in his affidavit had stated that this appeal for war funds was made by Mr. Vidyarthi, not after the operative part of the judgment had been pronounced, as maintained by him, but after he had stated that four persons had been found guilty and transported for life and before the other accused knew the fate which was in store for them. If the allegation had been proved, it would have constituted an act of extortion unparalleled in judicial administration, but, fortunately for Mr. Vidyarthi, their

Lordships found that he was not guilty of so heinous an offence. Still there would be more room for satisfaction if this part of the story had been more thoroughly investigated by their Lordships and Mr. Vid'yarthi declared absolutely not guilty of a procedure so objectionable. But, as we have already stated, the attitude of the Chief Justice was one of absolute incredulity when Sir Tej Bahadur Sapru first mentioned the allegation on the first day of hearing. Now coming to the evidence on the point, what is it that we find? Mr. R. L. Singhal stated that the judge did not read out the whole of the judgment. He only pronounced sentence on four of the accused and then kept silent for a minute or two. Then followed, according to this witness, the incident about war fund subscriptions, the rest of the judgment being delivered afterwards. Mr. Attar Singh, one of the witnesses for the respondents, stated that the Judge sentenced four of the accused to transportation for life and then appealed for war funds. After collection had been made the rest of the 16 accused were declared acquitted. "There was an interval of 15 minutes in between the order convicting the four accused and the other acquitting the 16 accused." Mr. Surajbal Swami in his evidence said: "He (the Judge) delivered first the judgment with regard to the four accused persons who were sentenced to transportation for life. He did not deliver the judgment as regards the rest of the accused when I was there, but the lawyers present knew that they (their clients) stood acquitted." The point was taken up by the Chief Justice during the examination of this witness and here are the questions and answers:

*Chief Justice:* May I take it that the decision of the judge as regards all the twenty accused was known to the lawyers at one and the same time, i.e. that four accused had been convicted and the rest acquitted?

*Witness:* My lord, this is the position. The lawyers present knew it.

*Chief Justice:* Then the accusation against the judge that he delivered judgment piecemeal is untrue?

*Witness:* Certainly. I may add that we knew that this is the state of affairs. But if by the word "delivered" it is understood that some portion of it was read loudly to the accused and some portion was not then it is not correct.

*Chief Justice:* Will you kindly elucidate the statement that you made about the delivery of judgment in the first paragraph of your examination-in-chief which has just been read over to you?

*Witness:* My lord, the position is that some of the lawyers may have been present before me when the warrants for the com-

mitment of the accused, who were convicted, to jail were being written and it may have been then that they somehow or other inferred and also knew that my clients also stood acquitted.

*Chief Justice:* How did you know that your clients stood acquitted?

*Witness:* The entire court was chock-full and for some time I stood in the gallery. Then Harish Chandra probably informed me that papers were being written to send some of the accused to jail and we did not know what will happen to our men, and he asked me to go in and find out. I told him that Mr. Gupta was there, but then he insisted on my going and I went there and from the talk which had been going on previously between the judge and some of the lawyers present before the judgment was pronounced, I gathered that the rest of the accused were to be acquitted.

*Chief Justice:* So it is a fact that all at once it was known to everybody concerned that four of the accused had been convicted and the rest acquitted?

We do not know why the first question should have been in the form of what in law is called a "leading question," to which lawyers usually resort in cross-examination of witnesses, but apart from it the resultant position from the examination of this witness can at best be one of doubt and not that he does not support the evidence of Mr. Singhal and Mr. Attar Singh, which is their Lordships' finding. The version of this witness is that both the lawyers and the accused knew what the judgment was, not that the whole operative part of the judgment had been read out before the war fund collections started, as Mr. Vidyarthi maintained. If the position was thus one of doubt still, we feel that the High Court should have pursued the matter, both in view of the gravity of the allegations and in the interests of the administration of justice, by calling upon others who were present in court to come forward and testify as to what happened. It is a pity this was not done.

Lastly, we come to the general question of association of judicial officers in war fund collections. We do not know whether what happened at Meerut had been happening in other parts of the province, but the Meerut case is certainly not the only instance of abuse of position by judicial officers in the collection of war funds. In a petition moved before the Patna High Court by one of the parties in a criminal case, his Lordship Mr. Justice Agarwala set aside the order of the trying Magistrate, being satisfied that the proceedings in the case were dropped not because of lack of merit in the original application but because one of the parties eventually agreed to subscribe Rs. 200 to the war fund. His Lordship also directed that the sum be refunded to the party who was stated to have contributed

it to the war fund. In doing so, his Lordship remarked:

Disputes in courts of the country have to be decided on law and procedure prescribed by the Legislature, and it is highly improper for any Magistrate or any presiding officer of a court to invite subscriptions to public or charitable funds from anybody appearing in his court either in the capacity of a party or a witness or professionally or to entertain suggestions made by anybody else that donations should be accepted from such persons.

Cases of abuse of authority by executive officers are many, but here we shall refer to one flagrant instance. The Naib Tahsildar of Hansi convened a meeting of villagers in Bawani Khera for collecting war funds. A list was prepared under his instructions as to what amount should be donated by each person. One Mutsadi, who was assessed Rs. 100, refused to pay the amount and he was prosecuted for what he said then under Rule 38 of the Defence of India Rules and sentenced to 9 months' rigorous imprisonment and a fine of Rs. 50 or, in default, three months more. On appeal the Sessions Judge of Hissar acquitted him (Appellate Side Criminal Case No. 249 of 1941), and in doing so remarked:

On the other hand, I consider that it was the Naib Tahsildar who brought into contempt the Government and offended against the dignity of the authorities mentioned in Clause 'E' of Rule 34 by proceeding in a manner as to give the impression that the payment of the war fund shall amount to imposition by the authorities.

There is, however, nothing on record to show that the Naib Tahsildar was convicted under the same Rule and sentenced to the same term of 9 months' rigorous imprisonment and fine of Rs. 50 or, in default, three months' rigorous imprisonment more!

When there are such instances of abuse of their powers by executive officers and when other instances of abuse of their position by judicial officers in the collection of war funds have also come to light, we feel there will be greater confidence in the administration of justice in this country, if judicial officers are asked not to participate actively in the collection of war funds. In the circular issued by the Registrar of the Allahabad High Court, we are told that the Chief Justice "is determined to do all in his power to prevent members of the public from thinking that the subscription or non-subscription by the public to the War Purposes Fund will in any way affect the independence and impartiality of judicial officers." But the only way in which he can prevent the public from thinking so is to ask judicial officers to refrain from taking active part in activities connected with collections for war funds. There is no other way in which he can do it.



*Mr. R. L. Singhal*

V

Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*, has been committed to prison for two months, to purge his contempt, by their Lordships, and in doing so they have passed certain strictures on the evidence given by him in this case. Before we proceed to examine the process of reasoning by which their Lordships arrived at his guilt and the assumptions which enabled them to pass those strictures, we would like, here and now, to pay our tribute of admiration to one who played the most honourable part of all in these proceedings. We owe it to ourselves, and we owe it to the profession to which he and we belong, to state that his own motive throughout has been to stand by the truth, irrespective of the consequences to himself. When the notice was first issued on the Editor and the Printer of this paper, Mr. Singhal, as the correspondent of the paper, was in no way concerned in it. It was only at a later stage when it was found that his evidence would be essential for the defence of this paper against the charge of contempt that he was asked whether it would be possible for him to give evidence. Both he and we understood the position, that though the legal responsibility was the editor's, by voluntarily coming forward to give evidence on behalf of the editor, he would be running the risk of himself being prosecuted. Whatever hesitation there might have been on the part of this paper in asking one of its correspondents to take upon himself this considerable risk, there was none so far as Mr. Singhal was concerned. To the spirit in which he came forward to stand by the truth and thereby vindicate this paper, it is our duty to pay our homage.

That brings us to the wider question of the responsibilities of the editor and the correspondent which is one of the outstanding issues raised in this case. By a fiction of law, the editor of a newspaper is made, rightly or wrongly, responsible for everything that appears in his paper, irrespective of the fact whether the articles appearing in it are written by him or not, or even seen by him before publication or not. Editors are asked to assume responsibility for everything that appears in their paper even when they are hundreds of miles away from where their papers are printed, and we presume that if a plea of *alibi* is entered by an editor called upon to explain something that has appeared in his paper during his absence any court would reject that plea as untenable. When such is the legal responsibility of the editor, why should correspondents also be penalized for the same offence? The editor and the printer of this paper were as much responsible for the comment which appeared in the *Hindustan Times* on August 5, 1941, as for the news-items

which appeared on August 3, 1941, and they gladly assumed that responsibility. If for purposes of defence it was not necessary to disclose the name of the correspondent, there was no means by which the court could get at him, just as there was no means by which the court could get at the actual writer of the offending comment. Should a correspondent be penalized simply because he voluntarily comes forward to help the court in establishing the truth? In any case, what exactly is his offence? Did it consist in sending the news to his paper, or in the news sent by him being published? Editors and correspondents know that there is no obligation on the former to accept and publish all the reports sent by the latter. If a report is sent by a correspondent and is rejected by the editor, will he be equally guilty, if the news happened to be an objectionable one, even though it may not have been published? If publication formed the chief element in the offence, is it not right that the responsibility should be the editor's and the printer's, and not that of the correspondent? If it is argued that though the editor may be the primarily guilty party the correspondent is in the position of accessory to the crime, how many come under the definition of accessory? Is the sub-editor who subs the correspondent's copy and has the right to reject or publish it—and, in fact, does the delegated function of the editor—equally an accessory? What about the compositors and proof-readers who help in the task of publication of the offending article? With a delightful insouciance, their Lordships ignored all these aspects of law inherent in the case and proceeded to make an example of the unoffending correspondent, as though he were the supreme offender in this drama. We maintain that the responsibility can be that of the editor or of the correspondent and not of both. And since the editor's responsibility is assumed and accepted on all hands, there could not be any justification for convicting the correspondent for a crime of which the editor became guilty by the fact of publication.

That is the wide issue which this case has given rise to, and since the Press as a whole is interested in it we hope the Standing Committee of the Editors' Conference will move for a clarification of the legal position. One result of the finding of the Allahabad High Court may well be to add another risk to the already considerable risks which correspondents of newspapers run, especially in the mofussil, and which, to that extent, will interfere with the supply of news which flows into a newspaper office. It is true that today correspondents of newspapers enjoy the protection of the convention which the profession observes, that editors do not ordinarily disclose the identity of their correspondents and always assume the responsibility for any offending publication themselves. But cases may arise—as in the present instance—in which it may be necessary to disclose the name of the correspondent, in the interests of getting

at the truth, and, even in such cases, we maintain that correspondents must be protected from the persecution of the Law so long as the editor is ready and willing to assume full responsibility for the publication.

Coming now to the specific case of Mr. R. L. Singhal, our Meerut correspondent, all the considerations mentioned by us in defence of the editor apply to him equally and he is not more guilty than the editor of the offence of contempt, as their Lordships seem to imply. In his case, however, their Lordships have recorded the finding that "he may either himself have drawn this erroneous inference (that Mr. Vidyarthi uttered the words attributed to him) from what he saw or he may have accepted what he heard from others." If this is his offence, we feel constrained to say that he has a very good defence. In case Mr. Singhal left Mr. Vidyarthi's court on that day under the impression that Mr. Vidyarthi had uttered these words, then his *bona fides* are established and he should have been treated as one who had been genuinely labouring under a mistake. If he had accepted the story from others on whom he relied, even then he may be guilty of passing on a wrong story unwarily, but would not be guilty of deliberate contempt. In either case, his offence would only be a technical one, even if we accept their Lordships' finding, and not one meriting the punishment of two months' imprisonment passed on him.

Next, we come to the very remarkable process of reasoning by which their Lordships arrived at the conclusion that Mr. Singhal was not a witness on whose evidence much reliability could be placed. We feel that if their Lordships had some acquaintance with practices which prevail in newspaper offices or had the benefit of advice of someone connected with journalistic work, they would not have been betrayed into doing a grave wrong to a working journalist, and, what is more, finding him guilty of the offence of contempt on the basis of such reasoning. Because Mr. Singhal did not disclose the source of his news but used the words "I reliably learn," their Lordships call it "a truly remarkable" omission, and say that if Mr. Vidyarthi had used the words alleged, Mr. Singhal could have no conceivable reason for not saying what his "reliable source" was, and that in their opinion it was "utterly unbelievable" that Mr. Singhal would not have reported Mr. Vidyarthi's utterance to the newspaper he was serving. They are "absolutely convinced" that if Mr. Vidyarthi had uttered these words in Mr. Singhal's presence he would have at once reported it to the *Hindustan Times*. To any one with even a nodding acquaintance with journalism, this logic must appear truly amazing. We have absolutely no desire to be anything but respectful towards their Lordships, but we are afraid they came a cropper. Even now if their Lordships care to look at their daily newspapers a

little more carefully than they appear to have done, they will find that correspondents of newspapers quite often use phrases like "I reliably learn," "It is understood" and "I learn from a reliable source." The secret behind the use of such words is that the source of news should not be disclosed, for once the source is disclosed, the supply of news will immediately dry up. And the editor who, in every instance, goes hunting after the source of information of his correspondents will have started on a fool's errand which will never end. It may be that the habit which began thus is carried on to unjustified lengths, but we feel that if their Lordships were even casually aware of the practice they would not have drawn the conclusion they did from the fact that Mr. Singhal had used the words "I reliably learn."

The second reason given by their Lordships to doubt Mr. Singhal's veracity is that first of all he reported the facts of the Dhakoli case and the judgment, and then there was an item of news about an extraneous matter and, last of all, came the offending item about what Mr. Vidyarthi said. Their Lordships state: "This leaves no doubt in our mind that Mr. Singhal had not heard the Judge make the alleged statement while delivering judgment in the Dhakoli case." Here again, if their Lordships are aware of the manner in which correspondents' items are cut, clipped and rearranged in newspaper offices, they would not have jumped to the conclusion they did because of the shape in which the copy emerged from the press. We speak subject to correction, but our recollection is that this particular copy was also dealt with in the usual manner and, consequently, any inference from the order of the news is not justified. In fact, their Lordships themselves refer "to the original, as sent by Mr. Singhal, being rearranged by the editorial staff."

The third point made by their Lordships was with reference to Mr. Singhal's reply to the letter written by us on August 9. Here is the first paragraph of Mr. Singhal's reply:

In reply to your letter of the 9th instant regarding the Circular of the Chief Justice of the Allahabad High Court to the judicial officers I have to state that my news was based on the verbal saying of Mr. Hari Shankar, the Second Additional District and Sessions Judge, Meerut, in the open court and to the lawyers concerned, not only once but several times, in the course of his delivering judgment, which had probably not been completely written by then for when I requested the Judge to give me the judgment for taking extracts for the Press he told me that it was not ready and I could send a bare message, in the Dhakoli murder case, that as the judicial officers had been asked by the Chief Justice, who had been requested by H.E. the Governor to co-operate in war efforts to raise subscriptions for war funds it was incumbent upon him that he should also contribute his share.

Now, from this reply they proceed to draw the inference that Mr. Singhal had stated that Mr. Vidyarthi had not only spoken the offending words but had asked Mr. Singhal to broadcast this statement to the Press. We are sure they would not have drawn this conclusion if they had cared to remember Sir Tej Bahadur's explanation. The sentence was a complicated one and Sir Tej suggested that the meaning would be clear if the words beginning with "which had probably not been completely written" and ending with "in the Dhakoli murder case" were enclosed within brackets. Without these brackets the sentence would mean that in the Dhakoli murder case the Judge asked him to send a bare message "that as the judicial officers, etc.," which would be meaningless as in murder cases what correspondents want to wire out is the conviction and sentence or the acquittal of the accused.

And finally, we come to the incident of the alleged interview between Mr. Singhal and Mr. Vidyarthi. Their Lordships' finding is that the interview never took place. Since Mr. Singhal confessed in his evidence that though he had given Mr. Vidyarthi's name to his paper he told Mr. Vidyarthi that he would not disclose his name to anybody, their Lordships came to the conclusion that "on his own showing Mr. Singhal has little regard for truth." To take up first the incident of the interview. Firstly, there is the evidence of the slip left by Mr. Vidyarthi's stenographer at Mr. Singhal's house, showing Mr. Vidyarthi's anxiety to meet the correspondent. Secondly, Mr. Gauri Shankar, who was present at the interview, corroborated Mr. Singhal's version of the interview, but their Lordships disposed of his evidence by saying that "we were not in any way impressed by this witness." Lastly, it was stated in the course of evidence that the interview was arranged through the intermediary of one B. Ganga Prasad, a distant relative of Mr. Vidyarthi. If their Lordships felt that they could not believe the evidence of two out of three persons present at the interview, it was certainly open to them to send for this B. Ganga Prasad and find what part he played in this incident. But without doing anything of the sort, they merely state that they prefer to accept Mr. Vidyarthi's own statement in the matter.

That statement was to the effect that the alleged interview never took place. When their Lordships accepted this version of the story, it meant that the alleged interview never took place. Still, they proceed to indict Mr. Singhal as one who, on his own showing, had little regard for truth because in an interview which, according to their Lordships, never took place, Mr. Singhal told Mr. Vidyarthi that he would not disclose his name, though as a matter of fact he had already done so. That appears to us to involve a double injustice to Mr. Singhal. His own version of the interview is disbelieved, but his own words are used to discredit him as a witness.

As regards this incident of Mr. Singhal telling an untruth to Mr. Vidyarthi, let us remember certain facts. Mr. Singhal's obligation was to his paper and not to Mr. Vidyarthi, and if Mr. Vidyarthi, according to Mr. Singhal's version, could ask Mr. Singhal to tell an untruth, too much should not have been made of the fact that Mr. Singhal saved himself from an embarrassing situation by telling an untruth. Moreover, in such matters, the courts will do well to observe one distinction in evaluating the reliability or otherwise of witnesses who come before them to tender evidence. We suggest that the witness who, once the oath had been administered to him, is prepared to tell the truth, the whole truth, and nothing but the truth, even if it involved the confession of an untruth told by him outside the court, is a far more honourable man, a more credible witness than a consistent liar, who lies outside the court, perjures himself in the witness-box, and tries to get away with it.

#### *Manufacture Of Evidence*

### VI

Lastly, we come to the strangest part of this episode. Convicting the editor and the printer of this paper of contempt, their Lordships said: "We don't feel justified in awarding a light sentence of fine, for *we are satisfied from the evidence* that they have manufactured evidence for the purpose of their defence." (Italics ours.) In the judgment itself we have looked in vain for any reference to the evidence on the basis of which their Lordships had reached this truly astonishing conclusion. Looking into the evidence and the proceedings, we could get only odd bits which could even remotely be said to justify a conclusion so strange. On the last date of hearing when counsel were arguing the case after all witnesses had been examined, we find the Chief Justice saying:

Speaking for myself, I do not like the frequent visits of Mr. Devadas Gandhi and Mr. Bharadwaja to Meerut. To me it appears that they were out to fabricate evidence by their repeated visits to Meerut.

Once we go into the region of likes and dislikes and appearances, facts and arguments are of little avail. We are sorry that such remarks should have been passed, based on nothing more than intuition. In the evidence placed before their Lordships, the objects of their visits were frankly stated. The first visit of Mr. Devadas Gandhi was for the purpose of inquiring into the facts stated by our Meerut correspondent and the second was for the purpose of engaging a local counsel. On neither occasion did Mr. Devadas Gandhi stay at Meerut overnight. Mr. Bharadwaja also

accompanied him during these two visits and in addition he visited Meerut once or twice, on the first occasion because he was called by Rai Bahadur Surajtal Dikshit. Since the whole case concerned an incident which took place at Meerut, it would, evidently, be impossible to put up an' defence without a minimum number of visits. To surmise from these visits, about which there was no secrecy, that they must have been made for the purpose of manufacturing evidence and pass strictures on the respondents on the basis of this surmise, without one single fact to justify the indictment, is not what one would ordinarily expect from the highest judicial tribunal in the country.

The next incident we can think of in this connection is the evidence given by Mr. Akbar Husain. He said that the impression which he had from his conversations with Mr. Banerji was that he told him that he (Mr. Banerji) was being pressed by Mr. Devadas Gandhi to make a particular kind of statement. But Mr. Banerji himself denied that any pressure was exerted on him or that he was asked by Mr. Devadas Gandhi to depose to any facts which were not within his knowledge. The only other relevant point in this connection is that Mr. Surajbal Swami had stated in his evidence that there were two parties in Meerut and that was why he did not like to drag himself in the mud. That on evidence so unsubstantial the High Court could draw a conclusion so damaging to the respondents is something inconceivable.

But this is only one half of the story. Let us see what is the other half. Once the proceedings were started against this paper, it was obvious that our Meerut correspondent would be one of the more important witnesses for the respondents. And it is on record, and it was not denied, that an attempt was made by Mr. Vidyarthi to approach him. Secondly, we have Mr. Vidyarthi's own admission that he took signed statements from some lawyers and that later he destroyed them. If the High Court wanted to do so, it could have insisted on Mr. Vidyarthi revealing the identity of the lawyers mentioned by him, summoned them to the High Court, placed them on their oath and asked them to reveal the true facts. But there is on record the statement of Mr. Krishna Swarup that he was asked by Mr. Vidyarthi to sign a statement saying that he was present in court and Mr. Vidyarthi did not utter the words attributed to him, though as a matter of fact he was not present in court. Next there is the evidence of Mr. Surajbal Swami that Mr. Vidyarthi had asked him not to depose anything about what he had said in court. In the face of this evidence, all that their Lordships say with reference to Mr. Vidyarthi is that he behaved "in a very unwise and misguided manner." As for his taking down the statements of lawyers, they say that he would have been better advised not to do so. But "in fairness to him" they also point out that the respondents were

collecting evidence against him and they could not accept the bare averment of Mr. Krishna Swarup that the statement which he signed was false. Their Lordships had nothing to say about Mr. Vidyarthi later destroying these statements.

Now that the public have before them all the facts, it is for them to judge whether there was any justification for the statement of their Lordships that the respondents had manufactured evidence for their defence. It is for them also to say who manufactured evidence and who destroyed it.

And now to sum up, we hope that so far as the three respondents were concerned we have succeeded in showing that at best they should have been honourably acquitted and at worst they were only guilty of a technical offence for which a nominal punishment should have been quite sufficient and that the strictures passed on them were not justified by the evidence produced in the case.

To the wider public the main issue involved in the case is the participation of judicial officers in war fund activities and it is for the public to express its opinion in an unmistakable manner.

Lastly, to editors and journalists the case has been of considerable importance. For them the issues involved are as to how far the present state of affairs is satisfactory so far as law and procedure in contempt cases are concerned, and the exact definition of the legal responsibility of an editor and a correspondent regarding an item of news sent by the latter and published by the former. We hope the Standing Committee of the Editors' Conference will consider all the issues involved and take whatever action it may consider appropriate to have law and procedure in these respects amended suitably.

*NEW DELHI, 3, 4, 5-12-41.*



## THE SOCIAL WELFARE

The principle on which commitments are made for contempt of Court, to quote an old case, is "to keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public. . . . . a libel upon a Court is a reflection upon the king and telling the people that the administration of justice is in weak or corrupt hands, that the fountain of justice itself is tainted and consequently that judgments which stream out of that fountain must be impure and contaminated."

In view of this classic dictum it has been held over and over again by the English Courts that a libel on a judge is contempt only when it is published with reference to his judicial capacity. The note in the *Hindustan Times* distinctly refers to the *administrative* capacity of the Chief Justice.

No more glaring case of a libel on a judge could be found than *In the matter of a special reference from the Bahama Islands*, (1893) Appeal Cases, page 38. In that case the Chief Justice was characterized by a journalist in the following terms:

"Search the annals of the bench of every country, of every age, and I defy creation to produce a more noble, more self-denying, and more virtuous exhibition of a tender conscience than was afforded by our Chief Justice in refusing to accept a gift of pine-apples! Some cynic has said, 'Every man has his price.' It is assuring to this community to know that the, 'fount of justice' in this colony is above the price of even one dozen pine-apples. Mr. Yelverton's noble words of scornful renunciation should be graven in letters of gold upon the walls of every sweet potatoes, pigeon peas, etc., cease to exert their baneful influence on the administration of justice in this colony. But should we be selfish and confine the influence of such virtue to the limited area of this colony? No, Mr. Editor, I and others cherish the hope that this beautiful incident will become historical, and the whole world be benefited by this last and greatest proof of the purity of English justice. Difficult as it is, Mr. Yelverton has mastered the problem of being great in little things. When a boy I remember reading of Judge Gascoygne and Prince Hal; I can but hope the little boys of the future will read of the noble conduct of our Judge Yelverton."

In giving the judgment the Privy Council held that these passages might be made the subject of proceedings for libel, but "were not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law, and, therefore, did not constitute contempt of Court."

The learned Chief Justice read the remarks of Sir Barnes Peacock in the Privy Council case of *Surendra Nath Banerjee vs. the Chief*

*Justice and Judges of the High Court* at Fort William in Bengal to mean that the comments on the non-judicial activities of a judge may become the subject-matter of a contempt. Sir Barnes Peacock's words are: "The publication of a libel reflecting upon a judge in his judicial capacity or in reference to his conduct in the discharge of his public duties."

What are the public duties of a judge? The principle laid down by Sir Barnes Peacock would be too wide if the discharge of public duties is read to mean duties outside the scope of the duties which a judge is enjoined to perform as a *judge* and it is open to grave doubt whether the issue of an order by a judge in his administrative capacity is in the discharge of his public duties as a judge.

By contempt proceedings, what is sought to be protected is not a judge, but a judge in regard to his acts as a judge. The administrative acts of a Chief Justice are really the acts of the Executive entrusted to him as a matter of policy; and are of the same nature which the Secretary of the Home Department or a Minister of the Crown would do were it not for the fact that with a view to ensure judicial independence they have been delegated to the Chief Justice by the Crown.

With great respect, to include the issuing of a circular relating to war funds in administrative capacity as the discharge of the public duties of a judge is to give him complete protection in Law against any criticism unless that criticism is solely restricted to the individual traits of a judge.

If the rule in *Shri Devadas's* case is correct, the 1893 Appeal case is not good law in India.

The judgment in the *Hindustan Times* case also lays down another principle which is scarcely reconcilable with law that a conditional allegation is not a libel.

In an American case, *Lang vs. Gilbert* (4 Allen) 445, it was held that a charge made in a hypothetical form is not defamatory. And so where the Defendant in a letter to A regarding an affidavit made by the Plaintiff about the service of a Writ upon him said that "If L (the Plaintiff) swears that I did not serve him with a copy of that Writ, he swears to a lie," meaning that the Plaintiff had committed perjury, it was held that even if the Defendant did not make the affidavit the letter was not libellous, because it only stated the matter hypothetically. English Law has not been different.

In the present case the editor was scrupulously fair by putting forward only a conditional statement regarding the alleged circular. From the article there is no doubt that he was anxious to keep the

fountain source of justice pure; and that he had clear doubts whether such a circular had been issued by the learned Chief Justice. The principle as laid down in this case, therefore, is in much wider terms than is justified by the authorities and requires a re-examination at the hands of an appropriate tribunal, if the Law of Libel is to be kept within the wholesome limits of English Law.

Shri Devadas did not invent this falsehood. The correspondent, though held, on conflicting testimony, to have not stated the whole truth, was a tried correspondent of the *Hindustan Times*. The learned Chief Justice has found: "As regards the editorial staff, we are prepared to accept the statement of Mr. Gandhi and of Mr. Bharadwaja that up to then they had had full confidence in Mr. Singhal and had never had reason to suspect the truth or accuracy of his reports. We, therefore, acquit them of malice towards the Chief Justice . . . ."

An editor, one should have thought, would be protected if he *bona fide* relied upon what he thought was a correct report and made a comment not inspired by improper motives and which was not discourteous to the Judge.

It is to be noted that in the course of replying to the searching questions of the learned Chief Justice Shri Devadas Gandhi replied thus:

*Chief Justice:* Do you now realize that the mention about a circular in the headlines was wholly unjustified?

*Mr. Gandhi:* I am prepared to agree.

*Chief Justice:* Did you appreciate this fact on the first day of hearing in this court?

*Mr. Gandhi:* I did.

*Chief Justice:* Do you consider it proper then to make amends for the wrong done by you?

*Mr. Gandhi:* The question of personal amends to your Lordship has been engaging the attention of myself and my distinguished counsel.

*Chief Justice:* It is not a question of making amends to the Chief Justice personally, but it is a question of making amends to the exalted office of Chief Justice. Has that engaged your attention so far?

*Mr. Gandhi:* It has.

\* \* \* \* \*

*Chief Justice:* You have talked about your 'public duty' in the course of your evidence. Does it occur to you that it was equally your

public duty not to show disrespect to the office of Chief Justice?

*Mr. Gandhi:* Entirely.

*Chief Justice:* Do you realize it now that disrespect has been shown to that office?

*Mr. Gandhi:* I realize that I have been the unwitting instrument of showing disrespect, for which I am extremely sorry.

After this statement of Shri Devadas one would have expected he would have been discharged, at the most with a warning, but the sentence indicates that the learned Chief Justice took a serious view of what the editor had done, though he had no doubt of Shri Devadas's *bona fides*.

Potent as the weapon of contempt proceedings is in the hands of judges they have been warned against wielding it without restraint. Great judges have laid down again and again that "this arbitrary, unlimited and uncontrolled power" should be exercised with the greatest caution.

Lord Atkin in *Ambard vs. Attorney-General for Trinidad and Tobago* (1936), A.C. 322, 325, laid down the principle in this form:

"Whether the authority and position of an individual judge or the due administration of justice is considered, no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong-headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

The case of the *Hindustan Times*, therefore, deserves attention of the judges, lawyers and journalists. If it lays down good law, not justice, but judges in any capacity except purely personal, cannot be the subject of any bona-fide comment, however respectfully and conditionally made. When we consider that in contempt of court cases the judge is himself the injured party, the prosecutor and the judge, and that though the dignity of the court, as distinguished from the vanity of the presiding judge, has to be protected—in most cases, human nature is apt to confound the two—the principle of the case, if it lays down good law, renders criticism of judges practically impossible and is, therefore, a death-blow to the freedom of speech so far as Indian Courts are concerned.

K. M. Munshi.

*Bombay, 11-12-41.*

## THE STATESMAN

Recently the editor and a correspondent of the *Hindustan Times* of Delhi were found guilty of contempt of court and sentenced to a month's and two months' imprisonment, respectively. The ground of the offence was the sending, publishing and commenting on a statement that in delivering or immediately after delivering judgment in a certain case a judge of a Meerut court said that judicial officers had been asked by the Chief Justice at the request of the Governor to contribute to the war effort. Mr. Devadas Gandhi, the editor, and Mr. Singhal, the correspondent, are now undergoing their sentence, though it is reported an application has been made for permission to appeal to the Privy Council. In three recent issues the *Hindustan Times* has discussed the case in all its bearings with dignity and restraint. It is not satisfied that justice has been done or that the Bench consisting of the Chief Justice of the Allahabad High Court and another understood the traditions of a newspaper and the intricacies of its production. Also it notices that in India a judge may be called on to hear a contempt case in which the alleged contempt refers to himself. The editor could have avoided imprisonment by the payment of a fine. But he declined this course feeling that principles were in issue and also because his correspondent was not given the option. This point of view will be approved by many. There is still considerable confusion in India about law and procedure in contempt cases and about the legal responsibility of editors and correspondents for news. Mr. Devadas Gandhi is not the man either to take a light view of his responsibilities or to compromise with what he considers his duty.-

*Calcutta-Delhi, 15-12-41.*

## RESOLUTIONS PASSED BY EDITORS

*Resolutions adopted by the Standing Committee of the All-India Newspaper Editors' Conference at a meeting held on December 18, 1941, at "Statesman House", Calcutta, with Mr. K. Srinivasan, President of the Conference, in the chair.*

1. Moved by Mr. C. R. Srinivasan, seconded by Mr. Francis Low, and supported by Mr. Arthur Moore:

Arising from the *Hindustan Times* contempt case, this Committee resolves—

- (a) that the present state of law and procedure in a certain class of contempt cases is extremely unsatisfactory in that it permits a judge against whom contempt is alleged to become both prosecutor and judge;
- (b) that it is necessary, therefore, to amend the law so that accused persons in such cases are not tried by the same court as the one to which the alleged contempt refers; and
- (c) that a sub-committee be appointed (consisting of five members to be nominated by the President) to consider what practical steps should be taken by the Committee to give effect to this resolution and their report placed before the next meeting of the Standing Committee.

2. Moved by Mr. C. R. Srinivasan, seconded by Mr. F. W. Bustin, and supported by Mr. K. Rama Rao:—

This Committee desires to place on record its appreciation of the view taken by Mr. Devadas Gandhi in electing to go to jail himself when the option of fine was not given to Mr. R. L. Singhal, the Meerut correspondent of the *Hindustan Times*.

# THE CONTEMPT OF COURTS ACT

(Act No. XII of 1926, as amended by Act XII of 1937.)

AN ACT TO DEFINE AND LIMIT THE POWERS OF CERTAIN

COURTS IN PUNISHING CONTEMPTS OF COURTS.

Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of Courts;

And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of courts; It is hereby enacted as follows:—

1. (1) This Act may be called the Contempt of Courts Act, 1926.  
(2) It shall extend to the whole of British India. (3) It shall come into force on such date as the Central Government may, by notification in the Official *Gazette*, appoint.

2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court;

Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.





## CHRONOLOGY

- July 31      (i) Judgment pronounced by Mr. Vidyarthi, Additional Civil and Sessions Judge, Meerut, in the Dhakoli murder case; making of alleged statement by the Judge and collection of contributions to war fund in court.
- (ii) Mr. K. N. Bannerji, Pleader, narrates the happenings in the court of Mr. Vidyarthi at a tea party in the Alexandra Club, Meerut, in the presence of Mr. N. B. Bonarji, District Magistrate.
- August 3      News about Dhakoli murder case judgment and alleged instructions by the Chief Justice appears in the *Hindustan Times*.
- August 5      (i) Comment in the local edition of the *Hindustan Times* on the above-mentioned news.
- (ii) Mr. Vidyarthi (Judge) sends for Mr. Singhal (correspondent) through his stenographer, who leaves a note at his house.
- August 6      (i) The same news appears in the Dak Edition of the *Leader* (Allahabad).
- (ii) Comment appears in the Dak Edition of the *Hindustan Times*.
- August 8      Allahabad High Court orders issue of writ of contempt against the Editor and the Printer and Publisher of the *Hindustan Times*.
- August 9      (i) News appears in the *Leader* (Allahabad) regarding High Court's notice for contempt of court to the *Hindustan Times*.
- (ii) The *Hindustan Times* office writes a letter to the Meerut correspondent inquiring about the source of his news.
- August 10     Meerut correspondent's reply to the *Hindustan Times'* inquiry.
- August 13     Mr. Singhal (correspondent) and Mr. Gauri Shankar meet Mr. Vidyarthi (Judge) at his house.

- August 14 News appears in the *Hindustan Times* about the High Court having issued notice for contempt of court against it.
- August 25 Writ of contempt served on Messrs. Devadas Gandhi and Devi Prasad Sharma.
- August 31 (i) Messrs. Devadas Gandhi and Bharadwaja visit Meerut to make personal inquiries and meet Mr. K. N. Bannerji, Pleader, at Prof. Dubey's house.
- (ii) Mr. Devadas Gandhi returns to Delhi in the evening.
- (iii) Mr. K. N. Bannerji, Pleader, meets Rai Bahadur Suraj Bal Dikshit and Mr. Akbar Husain, District Judge, at A.R.P. Club tea party.
- September 1 (i) Mr. Bharadwaja meets Mr. Suraj Bal Swami, lawyer.
- (ii) Mr. K. N. Bannerji, Pleader, meets Mr. Akbar Husain, District Judge, in his retiring room where Mr. Vidyarthi is also present.
- (iii) Mr. Vidyarthi (Judge) obtains written statements from Mr. Krishna Swarup Sharma and other lawyers of his court, by calling them into his chambers.
- September 2 (i) Mr. Bharadwaja interviews Mr. Akbar Husain, the District and Sessions Judge.
- (ii) Mr. Bharadwaja returns to Delhi.
- (iii) Mr. Suraj Bal Dikshit, Advocate, goes to Prof. Dubey and requests him to send for Mr. Gandhi or Mr. Bharadwaja.
- (iv) Prof. Dubey telephones to Mr. Gandhi (Delhi).
- September 3 Mr. Bharadwaja goes to Meerut and meets Mr. Suraj Bal Dikshit, who had sent for him.
- Between  
September  
3 and 9 } Mr. Vidyarthi (Judge) pays a visit to Allahabad (exact date not mentioned in evidence).

- September 9 (i) The two respondents (Messrs. Devadas Gandhi and Devi Prasad Sharma) file affidavits in the High Court.
- (ii) Hearing of the case by their Lordships the Chief Justice and Mr. Justice Collister.
- (iii) Respondents found guilty, but judgment reserved till September 15.
- September 10 (i) Mr. Vidyarthi (Judge) receives Mr. Gandhi's affidavit from High Court.
- (ii) Mr. Surajbal Swami, lawyer, meets Mr. Vidyarthi in his chambers by invitation.
- September 11 (i) Mr. Vidyarthi (Judge) examined departmentally by their Lordships in chambers.
- (ii) Judgment postponed: Alteration in procedure announced to Respondents' counsel in court.
- September 15 (i) Mr. Vidyarthi and Mr. Akbar Husain (District Judge) examined in court and case adjourned till September 25.
- (ii) Mr. Vidyarthi as well as the respondents asked to produce witnesses.
- September 16 List of witnesses filed on behalf of the respondents.
- September 17 List of witnesses filed on behalf of Mr. Vidyarthi.
- Between } Messrs. Devadas Gandhi and Bharadwaja visit Meerut  
September } to engage a local lawyer, Mr. Gopi Nath Sinha,  
17 and 24 } (exact date not mentioned in evidence).
- September 25 (i) Notice for contempt of court issued to Mr. R. L. Singhal (Meerut correspondent of the *Hindustan Times*).
- (ii) Messrs. Singhal, Gauri Shankar, Devadas Gandhi and Bharadwaja examined as witnesses.
- September 26 (i) Mr. Bharadwaja (continued from previous day), Prof. Dubey, Mr. Attar Singh, Mr. Suraj Bal Swami and Mr. Krishna Swarup examined as witnesses.
- (ii) Mr. Devadas Gandhi recalled to witness-box to answer question by court regarding name of author of comment.

- October 27 (i) Court passes order, with counsel's consent, for amending the notice issued to Mr. Singhal (correspondent) for correcting a defect.
- (ii) Telegram received by the court from Mr. Brahmajit Singh (one of Mr. Vidyarthi's witnesses) that, his wife being ill, he was unable to attend the court to give evidence.
- (iii) Respondents' evidence concluded with the examination of Mr. K. N. Bannerji, Pleader, as witness.
- (iv) Mr. Suraj Bal Dikshit (one of the counsel appearing in the case for Mr. Vidyarthi) tenders evidence on his behalf.
- (v) Sir Wazir Hasan (leading counsel for Mr. Vidyarthi) informs the court of decision not to produce rest of the witnesses who had been summoned.
- October 28 (i) Mr Vidyarthi re-cross-examined.
- (ii) Arguments by Sir Tej Bahadur Sapru, Sir Wazir Hasan and Government Advocate.
- (iii) Judgment reserved.
- November 14 (i) Judgment pronounced: Mr. Singhal sentenced to two months' imprisonment and sent to jail; Mr. Devadas Gandhi and Mr. Devi Prasad Sharma sentenced to fines of Rs. 1,000 and Rs. 500, respectively, or one month's imprisonment in default; in addition, the respondents ordered to pay Rs. 480 as costs of Government Advocate. Two weeks' time allowed for payment of fine.
- (ii) Mr. Devadas Gandhi intimates court that, as the correspondent has been sentenced to imprisonment without any option of fine, he, too, will not pay his fine and will prefer to go to jail.
- November 26 Consequent upon case, High Court issues circular letter to subordinate courts about judicial officers' participation in war efforts.
- November 28 (i) Mr. Devadas Gandhi sent to prison.
- (ii) Mr. Singhal transferred from "C" class to "A" class by court's order.
- December 8 Application filed in High Court for release of Mr. Singhal on bail, in view of proposed appeal to Privy Council.
- December 10 Mr. Singhal's bail application rejected.

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